

# HOUSE BILL No. 1309

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 22-3.

**Synopsis:** Worker's compensation. Establishes a process for transferring an employee's medical treatment to another attending physician. Establishes a premium surcharge on worker's compensation insurance policies and an assessment on the payroll of self-insured employers to fund the administrative expenses of the worker's compensation board. Makes changes in the computation and payment of worker's compensation and occupational disease benefits.

**Effective:** July 1, 2004.

---

---

**Liggett**

---

---

January 15, 2004, read first time and referred to Committee on Labor and Employment.

---

---

C  
o  
p  
y



Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## HOUSE BILL No. 1309

A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 22-3-3-4, AS AMENDED BY P.L.31-2000,  
2       SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2004]: Sec. 4. (a) After an injury and prior to an adjudication  
4       of permanent impairment, the employer shall furnish or cause to be  
5       furnished, free of charge to the employee, an attending physician for  
6       the treatment of ~~his~~ **the employee's** injuries, and in addition thereto  
7       such surgical, hospital, and nursing services and supplies as the  
8       attending physician or the worker's compensation board may deem  
9       necessary. If the employee is requested or required by the employer to  
10      submit to treatment outside the county of employment, the employer  
11      shall also pay the reasonable expense of travel, food, and lodging  
12      necessary during the travel, but not to exceed the amount paid at the  
13      time of the travel by the state to its employees under the state travel  
14      policies and procedures established by the **Indiana** department of  
15      administration and approved by the ~~state~~ budget agency. If the  
16      treatment or travel to or from the place of treatment causes a loss of  
17      working time to the employee, the employer shall reimburse the

2004

IN 1309—LS 7235/DI 102+



C  
o  
p  
y

employee for the loss of wages using the basis of the employee's average daily wage.

(b) During the period of temporary total disability resulting from the injury, the employer shall furnish the physician services, and supplies, and the worker's compensation board may, on proper application of either party, require that treatment by the physician and services and supplies be furnished by or on behalf of the employer as the worker's compensation board may deem reasonably necessary.

(c) **After the employee's medical treatment with an attending physician described in subsection (a) begins, neither the employer nor the employer's insurance carrier has the right to transfer or otherwise redirect an employee's medical treatment to another physician unless:**

**(1) the employee makes the transfer request;**

**(2) the attending physician requests that the physician's treatment of the employee be discontinued; or**

**(3) the worker's compensation board determines that there is good cause for the transfer.**

**(d) If the employer or the employer's insurance carrier desires to transfer or redirect the employee's medical treatment under subsection (c)(3) for good cause, the employer or the employer's insurance carrier shall file a transfer request with the worker's compensation board on forms prescribed by the board. A transfer may not occur until the worker's compensation board issues an order granting the transfer request.**

(e) After an employee's injury has been adjudicated by agreement or award on the basis of permanent partial impairment and within the statutory period for review in such case as provided in section 27 of this chapter, the employer may continue to furnish a physician or surgeon and other medical services and supplies, and the worker's compensation board may within the statutory period for review as provided in section 27 of this chapter, on a proper application of either party, require that treatment by that physician and other medical services and supplies be furnished by and on behalf of the employer as the worker's compensation board may deem necessary to limit or reduce the amount and extent of the employee's impairment. The refusal of the employee to accept such services and supplies, when provided by or on behalf of the employer, shall bar the employee from all compensation otherwise payable during the period of the refusal, and ~~his~~ **the employee's** right to prosecute any proceeding under IC 22-3-2 through IC 22-3-6 shall be suspended and abated until the employee's refusal ceases. The employee must be served with a notice

C  
o  
p  
y



1 setting forth the consequences of the refusal under this section. The  
 2 notice must be in a form prescribed by the worker's compensation  
 3 board. No compensation for permanent total impairment, permanent  
 4 partial impairment, permanent disfigurement, or death shall be paid or  
 5 payable for that part ~~or portion~~ of the impairment, disfigurement, or  
 6 death which is the result of the failure of the employee to accept the  
 7 treatment, services, and supplies required under this section. However,  
 8 an employer may at any time permit an employee to have treatment for  
 9 ~~his~~ **the employee's** injuries by spiritual means or prayer ~~in lieu~~ **instead**  
 10 of the physician or surgeon and other medical services and supplies  
 11 required under this section.

12 ~~(d)~~ **(f)** If, because of an emergency, or because of the employer's  
 13 failure to provide an attending physician or surgical, hospital, or  
 14 nursing services and supplies, or treatment by spiritual means or  
 15 prayer, as required by this section, or because of any other good reason,  
 16 a physician other than that provided by the employer treats the injured  
 17 employee during the period of the employee's temporary total  
 18 disability, or necessary and proper surgical, hospital, or nursing  
 19 services and supplies are procured within the period, the reasonable  
 20 cost of those services and supplies shall, subject to the approval of the  
 21 worker's compensation board, be paid by the employer.

22 ~~(e)~~ **(g)** Regardless of when it occurs, where a compensable injury  
 23 results in the amputation of a body part, the enucleation of an eye, or  
 24 the loss of natural teeth, the employer shall furnish an appropriate  
 25 artificial member, braces, and prosthodontics. The cost of repairs to or  
 26 replacements for the artificial members, braces, or prosthodontics that  
 27 result from a compensable injury pursuant to a prior award and are  
 28 required due to either medical necessity or normal wear and tear,  
 29 determined according to the employee's individual use, but not abuse,  
 30 of the artificial member, braces, or prosthodontics, shall be paid from  
 31 the second injury fund upon order or award of the worker's  
 32 compensation board. The employee is not required to meet any other  
 33 requirement for admission to the second injury fund.

34 ~~(f)~~ **(h)** If an accident arising out of and in the course of employment  
 35 after June 30, 1997, results in the loss of or damage to an artificial  
 36 member, a brace, an implant, eyeglasses, prosthodontics, or other  
 37 medically prescribed device, the employer shall repair the artificial  
 38 member, brace, implant, eyeglasses, prosthodontics, or other medically  
 39 prescribed device or furnish an identical or a reasonably equivalent  
 40 replacement.

41 ~~(g)~~ **(i)** This section may not be construed to prohibit an agreement  
 42 between an employer and the employer's employees that has the

C  
o  
p  
y



approval of the board and that binds the parties to:

- (1) medical care furnished by health care providers selected by agreement before or after injury; or
- (2) the findings of a health care provider who was chosen by agreement.

SECTION 2. IC 22-3-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) Compensation shall be allowed on account of injuries producing only temporary total disability to work or temporary partial disability to work beginning with:

- (1) the eighth ~~(8th)~~ day of ~~such~~ the disability, **for injuries occurring before July 1, 2004; and**
- (2) **the third day of the disability, for injuries occurring after June 30, 2004;**

except for medical benefits provided in section 4 of the chapter. **For injuries occurring before July 1, 2004,** compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days. **For injuries occurring after June 30, 2004, compensation is allowed for the first three (3) calendar days only if the disability continues for at least fourteen (14) days.**

(b) The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed injury. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance carrier that sets forth the reasons that the determination could not be made within thirty (30) days and states the facts or circumstances that are necessary to determine liability within the additional thirty (30) days. More than thirty (30) days of additional time may be approved by the worker's compensation board upon the filing of a petition by the employer or the employer's insurance carrier that sets forth:

C  
o  
p  
y



- (1) the extraordinary circumstances that have precluded a determination of liability within the initial sixty (60) days;
- (2) the status of the investigation on the date the petition is filed;
- (3) the facts or circumstances that are necessary to make a determination; and
- (4) a timetable for the completion of the remaining investigation.

An employer who fails to comply with this section is subject to a civil penalty of fifty dollars (\$50), to be assessed and collected by the board upon notice and hearing. Civil penalties collected under this section shall be deposited in the state general fund.

(c) Once begun, temporary total disability benefits may not be terminated by the employer unless:

- (1) the employee has returned to any employment;
- (2) the employee has died;
- (3) the employee has refused to undergo a medical examination under section 6 of this chapter or has refused to accept suitable employment under section 11 of this chapter;
- (4) the employee has received five hundred (500) weeks of temporary total disability benefits or has been paid the maximum compensation allowed under section 22 of this chapter, **for injuries occurring before July 1, 2004;** or
- (5) the employee is unable or unavailable to work for reasons unrelated to the compensable injury.

In all other cases the employer must notify the employee in writing of the employer's intent to terminate the payment of temporary total disability benefits and of the availability of employment, if any, on a form approved by the board. If the employee disagrees with the proposed termination, the employee must give written notice of disagreement to the board and the employer within seven (7) days after receipt of the notice of intent to terminate benefits. If the board and employer do not receive a notice of disagreement under this section, the employee's temporary total disability benefits shall be terminated. Upon receipt of the notice of disagreement, the board shall immediately contact the parties, which may be by telephone or other means, and attempt to resolve the disagreement. If the board is unable to resolve the disagreement within ten (10) days of receipt of the notice of disagreement, the board shall immediately arrange for an evaluation of the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily

C  
o  
p  
y



disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under IC 22-3-4-5.

(d) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(e) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under section 10 of this chapter and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

SECTION 3. IC 22-3-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 8. ~~With respect to injuries occurring prior to April 1, 1951, causing temporary total disability for work there shall be paid to the injured employee during such total disability for work a weekly compensation equal to fifty-five percent (55%) of his average weekly wages for a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after April 1, 1951, and prior to July 1, 1971, causing temporary total disability for work there shall be paid to the injured employee during such total disability a weekly compensation equal to sixty per cent (60%) of his average weekly wages for a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after July 1, 1971, and prior to July 1, 1974, causing temporary total disability for work there shall be paid to the injured employee during such total disability a weekly compensation equal to sixty per cent (60%) of his average weekly wages, as defined in IC 22-3-3-22 a period not to exceed five hundred (500) weeks. With respect to injuries occurring on and after July 1, 1974, and before July 1, 1976, causing temporary total disability or total permanent disability for work there shall be paid to the injured employee during such total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of his average weekly wages up to one hundred and thirty-five dollars (\$135.00) average weekly wages, as defined in section 22 of this chapter, for a period not to~~

C  
o  
p  
y



1 ~~exceed five hundred (500) weeks.~~ (a) With respect to injuries occurring  
 2 on and after ~~July 1, 1974,~~ and before July 1, 1976, **and before July 1,**  
 3 **2004,** causing temporary total disability or total permanent disability  
 4 for work, there shall be paid to the injured employee during the total  
 5 disability a weekly compensation equal to sixty-six and two-thirds  
 6 percent (66 2/3%) of ~~his~~ **the employee's** average weekly wages, as  
 7 defined in ~~IC 22-3-3-22,~~ **section 22 of this chapter,** for a period not to  
 8 exceed five hundred (500) weeks. Compensation shall be allowed for  
 9 the first seven (7) calendar days only if the disability continues for  
 10 longer than twenty-one (21) days.

11 (b) For injuries occurring after June 30, 2004, causing  
 12 temporary total disability or total permanent disability for work,  
 13 there shall be paid to the injured employee during the total  
 14 disability a weekly compensation equal to sixty-six and two-thirds  
 15 percent (66 2/3%) of the employee's average weekly wages (as  
 16 defined in IC 22-3-6-1) and subject to the minimum and maximum  
 17 payments described in subsections (c) and (d) for a period  
 18 described in section 22 of this chapter. Compensation is allowed for  
 19 the first three (3) calendar days only if the disability continues for  
 20 at least fourteen (14) calendar days.

21 (c) The minimum weekly payment for temporary total disability  
 22 or total permanent disability determined under subsection (b) is  
 23 the lesser of:

24 (1) the amount calculated in subsection (b); or

25 (2) the following amounts:

26 (A) One hundred dollars and ninety cents (\$100.90) per  
 27 week for a single employee.

28 (B) One hundred five dollars and fifty cents (\$105.50) per  
 29 week for a married employee without children.

30 (C) One hundred eight dollars and thirty cents (\$108.30)  
 31 per week for an employee with one (1) child.

32 (D) One hundred thirteen dollars and forty cents (\$113.40)  
 33 per week for an employee with two (2) children.

34 (E) One hundred seventeen dollars and forty cents  
 35 (\$117.40) per week for an employee with three (3) children.

36 (F) One hundred twenty-four dollars and thirty cents  
 37 (\$124.30) per week for an employee with more than three  
 38 (3) children.

39 (d) The maximum weekly payment for temporary total  
 40 disability or total permanent disability determined under  
 41 subsection (b) is one hundred thirty-three and one-third percent  
 42 (133 1/3%) of the state average weekly wage (as defined in

C  
o  
p  
y





IC 22-3-6-1).

(e) An injured employee receiving compensation for total permanent disability determined under subsection (b) is entitled to an annual adjustment to the weekly compensation rate paid as supplemental compensation from the rate adjustment fund established by IC 22-3-4-15 and determined as follows:

(1) The adjustment to the weekly compensation rate begins on July 1 of the second year after the award or settlement and is made on July 1 each year thereafter.

(2) The adjustment to the weekly compensation rate is payable for a year if, in the period between:

(A) the date of:

(i) the entry of the award or settlement; or

(ii) the last annual adjustment to the weekly compensation rate; and

(B) July 1 of that year;

there has been an increase in the state average weekly wage, as defined by IC 22-3-6-1. The weekly compensation rate shall be proportionately increased by the same percentage as the percentage of increase in the state average weekly wage for the period.

(3) The weekly compensation after an adjustment under this subsection may not exceed the maximum weekly payment determined under subsection (d).

(4) The amount of the adjustment determined under this subsection is payable in the same manner as the weekly payment for total permanent disability.

(5) If, in the period described in subdivision (2), the state average weekly wage has not increased or has decreased, the weekly compensation rate does not change.

SECTION 4. IC 22-3-3-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. With respect to injuries occurring prior to April 1, 1951 causing temporary partial disability for work; compensation shall be paid to the injured employee during such disability, as prescribed in section 7 of this chapter, a weekly compensation equal to fifty-five per cent (55%) of the difference between his average weekly wages and the weekly wages at which he is actually employed after the injury, for a period not to exceed three hundred (300) weeks. With respect to injuries occurring on and after April 1, 1951 and prior to July 1, 1974 causing temporary partial disability for work; compensation shall be paid to the injured employee during such disability, as prescribed in section 7 of this chapter, a

C  
o  
p  
y



1 weekly compensation equal to sixty per cent (60%) of the difference  
 2 between his average weekly wages and the weekly wages at which he  
 3 is actually employed after the injury; for a period not to exceed three  
 4 hundred (300) weeks. With respect to (a) For injuries occurring on and  
 5 after July 1, 1974, and before July 1, 2004, causing temporary partial  
 6 disability for work, compensation shall be paid to the injured employee  
 7 during such the disability as prescribed in section 7 of this chapter, a  
 8 weekly compensation equal to sixty-six and two-thirds percent (66  
 9 2/3%) of the difference between his the employee's average weekly  
 10 wages and the weekly wages at which he the employee is actually  
 11 employed after the injury, for a period not to exceed three hundred  
 12 (300) weeks. In case the partial disability begins after the period of  
 13 temporary total disability, the latter period shall be included as a part  
 14 of the maximum period allowed for partial disability.

15 (b) For injuries occurring after June 30, 2004, causing  
 16 temporary partial disability for work, the compensation paid to the  
 17 injured employee during the disability is prescribed in section 7 of  
 18 this chapter. The weekly compensation is equal to sixty-six and  
 19 two-thirds percent (66 2/3%) of the difference between the  
 20 employee's average weekly wages and the weekly wages at which  
 21 the employee is actually employed after the injury, for the period  
 22 of the disability.

23 SECTION 5. IC 22-3-3-10, AS AMENDED BY P.L.31-2000,  
 24 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 25 JULY 1, 2004]: Sec. 10. (a) With respect to injuries in the following  
 26 schedule occurring prior to April 1, 1951, the employee shall receive  
 27 in addition to temporary total disability benefits not exceeding  
 28 twenty-six (26) weeks on account of the injuries, a weekly  
 29 compensation of fifty-five percent (55%) of the employee's average  
 30 weekly wages. With respect to injuries in the following schedule  
 31 occurring on and after April 1, 1951, and prior to July 1, 1971, the  
 32 employee shall receive in addition to temporary total disability benefits  
 33 not exceeding twenty-six (26) weeks on account of the injuries, a  
 34 weekly compensation of sixty percent (60%) of the employee's average  
 35 weekly wages. With respect to injuries in the following schedule  
 36 occurring on and after July 1, 1971, and before July 1, 1977, the  
 37 employee shall receive in addition to temporary total disability benefits  
 38 not exceeding twenty-six (26) weeks on account of the injuries, a  
 39 weekly compensation of sixty percent (60%) of the employee's average  
 40 weekly wages not to exceed one hundred dollars (\$100) average weekly  
 41 wages; for the periods stated for the injuries. With respect to injuries  
 42 in the following schedule occurring on and after July 1, 1977, and

C  
o  
p  
y



before July 1, 1979, the employee shall receive, in addition to temporary total disability benefits not exceeding twenty-six (26) weeks on account of the injury, a weekly compensation of sixty percent (60%) of his average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the injury. With respect to injuries in the following schedule occurring on and after July 1, 1979, and before July 1, 1988, the employee shall receive, in addition to temporary total disability benefits not to exceed fifty-two (52) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred twenty-five dollars (\$125) average weekly wages, for the period stated for the injury.

(b) With respect to injuries in the following schedule occurring on and after July 1, 1988, and before July 1, 1989, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred sixty-six dollars (\$166) average weekly wages, for the period stated for the injury.

(c) With respect to injuries in the following schedule occurring on and after July 1, 1989, and before July 1, 1990, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the injury.

(d) With respect to injuries in the following schedule occurring on and after July 1, 1990, and before July 1, 1991, the employee shall receive, in addition to temporary total disability benefits not exceeding seventy-eight (78) weeks on account of the injury, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the injury:

(1) Amputation: For the loss by separation of the thumb, sixty (60) weeks, of the index finger forty (40) weeks, of the second finger thirty-five (35) weeks, of the third or ring finger thirty (30) weeks, of the fourth or little finger twenty (20) weeks, of the hand by separation below the elbow joint two hundred (200) weeks, or the arm above the elbow two hundred fifty (250) weeks, of the big toe sixty (60) weeks, of the second toe thirty (30) weeks, of the third toe twenty (20) weeks, of the fourth toe fifteen (15) weeks, of the fifth or little toe ten (10) weeks; and for loss occurring

C  
o  
p  
y



before April 1, 1959, by separation of the foot below the knee joint one hundred fifty (150) weeks and of the leg above the knee joint two hundred (200) weeks; for loss occurring on and after April 1, 1959, by separation of the foot below the knee joint, one hundred seventy-five (175) weeks and of the leg above the knee joint two hundred twenty-five (225) weeks. The loss of more than one (1) phalange of a thumb or toes shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the thumb or toe and compensation shall be paid for one-half (1/2) of the period for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) the period for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger, shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the period for the loss of the entire finger.

(2) For the loss by separation of both hands or both feet or the total sight of both eyes, or any two (2) such losses in the same accident, five hundred (500) weeks.

(3) For the permanent and complete loss of vision by enucleation or its reduction to one-tenth (1/10) of normal vision with glasses, one hundred seventy-five (175) weeks.

(4) For the permanent and complete loss of hearing in one (1) ear, seventy-five (75) weeks, and in both ears, two hundred (200) weeks.

(5) For the loss of one (1) testicle, fifty (50) weeks; for the loss of both testicles, one hundred fifty (150) weeks.

(b) With respect to injuries in the following schedule occurring prior to April 1, 1951, the employee shall receive in lieu of all other compensation on account of the injuries, a weekly compensation of fifty-five percent (55%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1951, and prior to April 1, 1955, the employee shall receive in lieu of all other compensation on account of the injuries a weekly compensation of sixty percent (60%) of the employee's average weekly wages. With respect to injuries in the following schedule occurring on and after April 1, 1955, and prior to July 1, 1971, the employee shall receive in addition to temporary total disability benefits not exceeding

C  
o  
p  
y



1 twenty-six (26) weeks on account of the injuries; a weekly  
 2 compensation of sixty percent (60%) of the employee's average weekly  
 3 wages. With respect to injuries in the following schedule occurring on  
 4 and after July 1, 1971, and before July 1, 1977, the employee shall  
 5 receive in addition to temporary total disability benefits not exceeding  
 6 twenty-six (26) weeks on account of the injuries; a weekly  
 7 compensation of sixty percent (60%) of the employee's average weekly  
 8 wages; not to exceed one hundred dollars (\$100) average weekly  
 9 wages; for the period stated for such injuries respectively. With respect  
 10 to injuries in the following schedule occurring on and after July 1,  
 11 1977, and before July 1, 1979, the employee shall receive, in addition  
 12 to temporary total disability benefits not exceeding twenty-six (26)  
 13 weeks on account of the injury; a weekly compensation of sixty percent  
 14 (60%) of the employee's average weekly wages not to exceed one  
 15 hundred twenty-five dollars (\$125) average weekly wages; for the  
 16 period stated for the injury.

17 (e) With respect to injuries in the following schedule occurring on  
 18 and after July 1, 1979, and before July 1, 1988, the employee shall  
 19 receive, in addition to temporary total disability benefits not exceeding  
 20 fifty-two (52) weeks on account of the injury, a weekly compensation  
 21 of sixty percent (60%) of the employee's average weekly wages not to  
 22 exceed one hundred twenty-five dollars (\$125) average weekly wages  
 23 for the period stated for the injury.

24 (f) With respect to injuries in the following schedule occurring on  
 25 and after July 1, 1988, and before July 1, 1989, the employee shall  
 26 receive, in addition to temporary total disability benefits not exceeding  
 27 seventy-eight (78) weeks on account of the injury, a weekly  
 28 compensation of sixty percent (60%) of the employee's average weekly  
 29 wages, not to exceed one hundred sixty-six dollars (\$166) average  
 30 weekly wages, for the period stated for the injury.

31 (g) With respect to injuries in the following schedule occurring on  
 32 and after July 1, 1989, and before July 1, 1990, the employee shall  
 33 receive, in addition to temporary total disability benefits not exceeding  
 34 seventy-eight (78) weeks on account of the injury, a weekly  
 35 compensation of sixty percent (60%) of the employee's average weekly  
 36 wages, not to exceed one hundred eighty-three dollars (\$183) average  
 37 weekly wages, for the period stated for the injury.

38 (h) With respect to injuries in the following schedule occurring on  
 39 and after July 1, 1990, and before July 1, 1991, the employee shall  
 40 receive, in addition to temporary total disability benefits not exceeding  
 41 seventy-eight (78) weeks on account of the injury, a weekly  
 42 compensation of sixty percent (60%) of the employee's average weekly

C  
 o  
 p  
 y



wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the injury.

(1) Loss of use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid for the same period as for the loss thereof by separation.

(2) Partial loss of use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

(3) For injuries resulting in total permanent disability, five hundred (500) weeks.

(4) For any permanent reduction of the sight of an eye less than a total loss as specified in subsection (a)(3), compensation shall be paid for a period proportionate to the degree of such permanent reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then in such event compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses, plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

(5) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subsection (a)(4), compensation shall be paid for a period proportional to the degree of such permanent reduction.

(6) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation board, not exceeding five hundred (500) weeks.

(7) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

(~~cc~~) (i) With respect to injuries in the following schedule occurring on and after July 1, 1991, **and before July 1, 2004**, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the injury,

C  
o  
p  
y



1 compensation in an amount determined under the following schedule  
 2 to be paid weekly at a rate of sixty-six and two-thirds percent (66 2/3%)  
 3 of the employee's average weekly wages during the fifty-two (52)  
 4 weeks immediately preceding the week in which the injury occurred.

5 (1) Amputation: For the loss by separation of the thumb, twelve  
 6 (12) degrees of permanent impairment; of the index finger, eight  
 7 (8) degrees of permanent impairment; of the second finger, seven  
 8 (7) degrees of permanent impairment; of the third or ring finger,  
 9 six (6) degrees of permanent impairment; of the fourth or little  
 10 finger, four (4) degrees of permanent impairment; of the hand by  
 11 separation below the elbow joint, forty (40) degrees of permanent  
 12 impairment; of the arm above the elbow, fifty (50) degrees of  
 13 permanent impairment; of the big toe, twelve (12) degrees of  
 14 permanent impairment; of the second toe, six (6) degrees of  
 15 permanent impairment; of the third toe, four (4) degrees of  
 16 permanent impairment; of the fourth toe, three (3) degrees of  
 17 permanent impairment; of the fifth or little toe, two (2) degrees of  
 18 permanent impairment; by separation of the foot below the knee  
 19 joint, thirty-five (35) degrees of permanent impairment; and of the  
 20 leg above the knee joint, forty-five (45) degrees of permanent  
 21 impairment.

22 (2) Amputations: For the loss by separation of any of the body  
 23 parts described in subdivision (1) on or after July 1, 1997, and for  
 24 the loss by separation of any of the body parts described in  
 25 subdivision (3), (5), or (8), on or after July 1, 1999, the dollar  
 26 values per degree applying on the date of the injury as described  
 27 in subsection ~~(d)~~ (j) shall be multiplied by two (2). However, the  
 28 doubling provision of this subdivision does not apply to a loss of  
 29 use that is not a loss by separation.

30 (3) The loss of more than one (1) phalange of a thumb or toe shall  
 31 be considered as the loss of the entire thumb or toe. The loss of  
 32 more than two (2) phalanges of a finger shall be considered as the  
 33 loss of the entire finger. The loss of not more than one (1)  
 34 phalange of a thumb or toe shall be considered as the loss of  
 35 one-half (1/2) of the degrees of permanent impairment for the loss  
 36 of the entire thumb or toe. The loss of not more than one (1)  
 37 phalange of a finger shall be considered as the loss of one-third  
 38 (1/3) of the finger and compensation shall be paid for one-third  
 39 (1/3) of the degrees payable for the loss of the entire finger. The  
 40 loss of more than one (1) phalange of the finger but not more than  
 41 two (2) phalanges of the finger shall be considered as the loss of  
 42 one-half (1/2) of the finger and compensation shall be paid for

**C**  
**O**  
**P**  
**Y**



one-half (1/2) of the degrees payable for the loss of the entire finger.

(4) For the loss by separation of both hands or both feet or the total sight of both eyes or any two (2) such losses in the same accident, one hundred (100) degrees of permanent impairment.

(5) For the permanent and complete loss of vision by enucleation, thirty-five (35) degrees of permanent impairment.

(6) For the reduction of vision to one-tenth (1/10) of normal vision with glasses, thirty-five (35) degrees of permanent impairment.

(7) For the permanent and complete loss of hearing in one (1) ear, fifteen (15) degrees of permanent impairment, and in both ears, forty (40) degrees of permanent impairment.

(8) For the loss of one (1) testicle, ten (10) degrees of permanent impairment; for the loss of both testicles, thirty (30) degrees of permanent impairment.

(9) Loss of use: The total permanent loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(10) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

(11) For injuries resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(12) For any permanent reduction of the sight of an eye less than a total loss as specified in subsection (a)(3), the compensation shall be paid in an amount proportionate to the degree of a permanent reduction without correction or glasses. However, when a permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, then compensation shall be paid for fifty percent (50%) of the total loss of vision without glasses, plus an additional amount equal to the proportionate amount of the reduction with glasses, not to exceed an additional fifty percent (50%).

(13) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subsection (a)(4),

**C  
o  
p  
y**





compensation shall be paid in an amount proportionate to the degree of a permanent reduction.

(14) In all other cases of permanent partial impairment, compensation proportionate to the degree of a permanent partial impairment, in the discretion of the worker's compensation board, not exceeding one hundred (100) degrees of permanent impairment.

(15) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding forty (40) degrees of permanent impairment except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

~~(d)~~ (j) Compensation for permanent partial impairment shall be paid according to the degree of permanent impairment for the injury determined under subsection ~~(c)~~ (i) and the following:

(1) With respect to injuries occurring on and after July 1, 1991, and before July 1, 1992, for each degree of permanent impairment from one (1) to thirty-five (35), five hundred dollars (\$500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), nine hundred dollars (\$900) per degree; for each degree of permanent impairment above fifty (50), one thousand five hundred dollars (\$1,500) per degree.

(2) With respect to injuries occurring on and after July 1, 1992, and before July 1, 1993, for each degree of permanent impairment from one (1) to twenty (20), five hundred dollars (\$500) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), eight hundred dollars (\$800) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(3) With respect to injuries occurring on and after July 1, 1993, and before July 1, 1997, for each degree of permanent impairment from one (1) to ten (10), five hundred dollars (\$500) per degree; for each degree of permanent impairment from eleven (11) to twenty (20), seven hundred dollars (\$700) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty

C  
o  
p  
y



(50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(4) With respect to injuries occurring on and after July 1, 1997, and before July 1, 1998, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(5) With respect to injuries occurring on and after July 1, 1998, and before July 1, 1999, for each degree of permanent impairment from one (1) to ten (10), seven hundred fifty dollars (\$750) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(6) With respect to injuries occurring on and after July 1, 1999, and before July 1, 2000, for each degree of permanent impairment from one (1) to ten (10), nine hundred dollars (\$900) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand six hundred dollars (\$1,600) per degree; for each degree of permanent impairment above fifty (50), two thousand dollars (\$2,000) per degree.

(7) With respect to injuries occurring on and after July 1, 2000, and before July 1, 2001, for each degree of permanent impairment from one (1) to ten (10), one thousand one hundred dollars (\$1,100) per degree; for each degree of permanent impairment from eleven (11) to thirty-five (35), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), two thousand dollars (\$2,000) per degree; for each degree of permanent impairment above fifty (50), two thousand five hundred fifty dollars (\$2,500) per degree.

(8) With respect to injuries occurring on and after July 1, 2001, **and before July 1, 2004**, for each degree of permanent

C  
o  
p  
y



1 impairment from one (1) to ten (10), one thousand three hundred  
 2 dollars (\$1,300) per degree; for each degree of permanent  
 3 impairment from eleven (11) to thirty-five (35), one thousand five  
 4 hundred dollars (\$1,500) per degree; for each degree of  
 5 permanent impairment from thirty-six (36) to fifty (50), two  
 6 thousand four hundred dollars (\$2,400) per degree; for each  
 7 degree of permanent impairment above fifty (50), three thousand  
 8 dollars (\$3,000) per degree.

9 **(k) Compensation for permanent partial impairment for**  
 10 **injuries occurring after June 30, 2004, is determined under section**  
 11 **10.3 of this chapter.**

12 ~~(e)~~ **(l)** The average weekly wages used in the determination of  
 13 compensation for permanent partial impairment under subsections ~~(e)~~

14 **(i)** and ~~(d)~~ **(j)** shall not exceed the following:

15 (1) With respect to injuries occurring on or after July 1, 1991, and  
 16 before July 1, 1992, four hundred ninety-two dollars (\$492).

17 (2) With respect to injuries occurring on or after July 1, 1992, and  
 18 before July 1, 1993, five hundred forty dollars (\$540).

19 (3) With respect to injuries occurring on or after July 1, 1993, and  
 20 before July 1, 1994, five hundred ninety-one dollars (\$591).

21 (4) With respect to injuries occurring on or after July 1, 1994, and  
 22 before July 1, 1997, six hundred forty-two dollars (\$642).

23 (5) With respect to injuries occurring on or after July 1, 1997, and  
 24 before July 1, 1998, six hundred seventy-two dollars (\$672).

25 (6) With respect to injuries occurring on or after July 1, 1998, and  
 26 before July 1, 1999, seven hundred two dollars (\$702).

27 (7) With respect to injuries occurring on or after July 1, 1999, and  
 28 before July 1, 2000, seven hundred thirty-two dollars (\$732).

29 (8) With respect to injuries occurring on or after July 1, 2000, and  
 30 before July 1, 2001, seven hundred sixty-two dollars (\$762).

31 (9) With respect to injuries occurring on or after July 1, 2001, and  
 32 before July 1, 2002, eight hundred twenty-two dollars (\$822).

33 (10) With respect to injuries occurring on or after July 1, 2002,  
 34 **and before July 1, 2004**, eight hundred eighty-two dollars  
 35 (\$882).

36 SECTION 6. IC 22-3-3-10.3 IS ADDED TO THE INDIANA CODE  
 37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 38 1, 2004]: **Sec. 10.3. (a) For injuries occurring after June 30, 2004,**  
 39 **that result in permanent partial impairment, the employee shall**  
 40 **receive:**

41 **(1) temporary total disability benefits determined under**  
 42 **section 8 of this chapter; and**

C  
o  
p  
y



**(2) additional compensation for:**

**(A) the loss of a part of the body;**

**(B) the permanent and complete loss of use of a part of the body; or**

**(C) the partial loss of use of the body as a whole;**

**in an amount determined under this section.**

**(b) The additional compensation paid under this section is sixty percent (60%) of the employee's average weekly wages, determined under IC 22-3-6-1, paid weekly for the number of weeks:**

**(1) listed in section 10.5 of this chapter for the employee's injury; or**

**(2) determined by the alternative method set forth under section 10.7 of this chapter.**

**(c) The minimum weekly payment for partial permanent disability under this section is the lesser of:**

**(1) the amount calculated in subsection (b); or**

**(2) the following amounts:**

**(A) Eighty dollars and ninety cents (\$80.90) per week for a single employee.**

**(B) Eighty-three dollars and twenty cents (\$83.20) per week for a married employee without children.**

**(C) Eighty-six dollars and ten cents (\$86.10) per week for an employee with one (1) child.**

**(D) Eighty-eight dollars and ninety cents (\$88.90) per week for an employee with two (2) children.**

**(E) Ninety-one dollars and eighty cents (\$91.80) per week for an employee with three (3) children.**

**(F) Ninety-six dollars and ninety cents (\$96.90) per week for an employee with more than three (3) children.**

**(d) The maximum weekly payment for partial permanent disability under this section is one hundred thirty-three and one-third percent (133 1/3%) of the state average weekly wage, as defined in IC 22-3-6-1.**

**(e) The worker's compensation board shall determine the amount of compensation paid for partial permanent disability under this section and sections 10.5 and 10.7 of this chapter based on an evaluation of the employee's physical impairment and the effect of that impairment on the employee's life.**

**SECTION 7. IC 22-3-3-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10.5. (a) For injuries occurring after June 30, 2004, the schedules in this section apply to the determination of the**

**C  
O  
P  
Y**



1 additional compensation payable under section 10.3 of this chapter.

2 (b) The following amounts apply either to the loss of or to the  
3 permanent and complete loss of use of the following parts of the  
4 body:

- 5 (1) Thumb: Seventy (70) weeks.
- 6 (2) First, or index, finger: Forty (40) weeks.
- 7 (3) Second, or middle, finger: Thirty-five (35) weeks.
- 8 (4) Third, or ring, finger: Twenty-five (25) weeks.
- 9 (5) Fourth, or little, finger: Twenty (20) weeks.
- 10 (6) Great toe: Thirty-five (35) weeks.
- 11 (7) Each toe other than the great toe: Twelve (12) weeks.
- 12 (8) Hand: One hundred ninety (190) weeks.
- 13 (9) Arm: Two hundred thirty-five (235) weeks.
- 14 (10) Foot: One hundred fifty-five (155) weeks.
- 15 (11) Leg: Two hundred (200) weeks.
- 16 (12) Loss of one (1) eye, loss of sight: One hundred fifty (150)  
17 weeks.
- 18 (13) Loss of one (1) eye, removal: One hundred sixty (160)  
19 weeks.
- 20 (14) Loss of hearing in one ear: Fifty (50) weeks.
- 21 (15) Loss of hearing in both ears: Two hundred (200) weeks.
- 22 (16) One testicle: Fifty (50) weeks.
- 23 (17) Both testicles: One hundred fifty (150) weeks.

24 (c) The compensation of at least the listed amounts applies to the  
25 following fractures that result in permanent disability:

- 26 (1) A skull fracture: Six (6) weeks.
- 27 (2) A vertebral fracture: Six (6) weeks.
- 28 (3) A fracture of any of the following facial bones: Two (2)  
29 weeks for each bone:
  - 30 (A) Nasal.
  - 31 (B) Lachrymal.
  - 32 (C) Vomer.
  - 33 (D) Zygoma.
  - 34 (E) Maxilla.
  - 35 (F) Palatine.
  - 36 (G) Mandible.
- 37 (4) A fracture of a transverse process: Three (3) weeks.

38 (d) The amount of compensation allowed when an injury results  
39 in the loss of a kidney, spleen, or lung: At least ten (10) weeks per  
40 organ.

41 (e) The loss of the first or distal phalanx of the thumb, any  
42 finger, or any toe is considered to be equal to the loss of fifty

C  
o  
p  
y



percent (50%) of the thumb, finger, or toe. The compensation for the loss is fifty percent (50%) of the amounts specified in subsection (b).

(f) The loss of more than one (1) phalanx of the thumb, any finger, or any toe is considered to be the loss of the entire thumb, finger, or toe.

(g) The amount received for the loss of more than one (1) finger may not exceed the amount received under this section for the loss of a hand.

(h) The loss of more than one (1) digit or more than one (1) phalange on more than one (1) digit of a hand is compensated on the basis of the partial loss of use of a hand. The loss of, or the loss of use of, four (4) digits on a hand is considered the loss of the entire hand.

(i) The compensation for the amputation of an arm below the elbow is equal to the compensation for the loss of an arm.

(j) The compensation for the amputation of an arm above the elbow is fifteen (15) weeks, except that when the amputation of the arm:

- (1) is at the shoulder joint, preventing (or is so close to the shoulder joint as to prevent) the use of an artificial arm; or
- (2) results in the disarticulation of the arm at the shoulder joint;

the compensation is sixty-five (65) weeks.

(k) The compensation for the amputation of a leg below the knee is equal to the compensation for the loss of a leg.

(l) The compensation for the amputation of a leg above the knee is twenty-five (25) weeks, except that when the amputation of the leg:

- (1) is at the hip joint, preventing (or is so close to the hip joint as to prevent) the use of an artificial leg; or
- (2) results in the disarticulation of a leg at the hip joint;

the compensation is seventy-five (75) weeks.

(m) For the permanent partial loss of use of a body part, including sight of an eye or hearing of an ear, the compensation is proportionate, based on the percentage the partial loss of use of the body part bears to the total loss of use of the body part.

(n) When an employee has sustained a loss by amputation or a partial loss by amputation of a body part listed in subsection (b) before the injury for which the employee claims compensation under this article, the previous loss or loss of use of the body part is deducted from the compensation awarded under this article.

C  
o  
p  
y



(o) The following constitute total and permanent disability under this chapter:

- (1) Loss of both hands.
- (2) Loss of both arms.
- (3) Loss of both feet.
- (4) Loss of both legs.
- (5) Loss of both eyes.
- (6) Loss of:
  - (A) one (1) body part referred to in subdivisions (1) through (5); and
  - (B) another body part referred to in subdivisions (1) through (5) of a type different from the body part referred to clause (A).

This list does not exclude other cases that may establish that an employee has a total and permanent disability.

(p) For serious and permanent disfigurement to the hand, head, face, neck, arm, leg below the knee, or the chest above the axillary line, the employee is entitled to compensation for disfigurement in an amount of not more than one hundred fifty (150) weeks of compensation determined under section 10.3 of this chapter.

SECTION 8. IC 22-3-3-10.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 10.7. (a) For injuries occurring after June 30, 2004, this section applies when an employee sustains the following:

- (1) A permanent partial impairment not covered under the schedule set forth under section 10.5 of this chapter.
- (2) In addition to a permanent partial impairment covered under the schedule set forth under section 10.5 of this chapter, an injury that:
  - (A) does not disable the employee from performing the duties of the employee's employment; but
  - (B) does:
    - (i) disable the employee from pursuing other suitable occupations; or
    - (ii) result in physical impairment.
- (3) An injury that:
  - (A) partially disables the employee from performing the duties of the employee's usual and customary line of employment; but
  - (B) does:
    - (i) not result in an impairment of earning capacity; or
    - (ii) result in a impairment of earning capacity, and the

C  
O  
P  
Y



employee elects to waive the employee's right to recover under the schedule set forth under section 10.5 of this chapter.

(b) The additional compensation paid under section 10.3 of this chapter and this section is sixty percent (60%) of the employee's average weekly wages, determined under IC 22-3-6-1, paid weekly for that percentage of five hundred (500) weeks that the partial loss of use of the body bears to the use of the body as a whole, subject to the minimum and maximum weekly payment amounts set forth in section 10.3(c) and 10.3(d) of this chapter.

SECTION 9. IC 22-3-3-13, AS AMENDED BY P.L.178-2003, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. (a) As used in this section, "board" refers to the worker's compensation board created under IC 22-3-1-1.

(b) If an employee who from any cause, had lost, or lost the use of, one (1) hand, one (1) arm, one (1) foot, one (1) leg, or one (1) eye, and in a subsequent industrial accident becomes permanently and totally disabled by reason of the loss, or loss of use of, another such member or eye, the employer shall be liable only for the compensation payable for such second injury. However, in addition to such compensation and after the completion of the payment therefor, the employee shall be paid the remainder of the compensation that would be due for such total permanent disability out of a special fund known as the second injury fund, and created in the manner described in subsection (c).

(c) Whenever the board determines under the procedures set forth in subsection (d) that an assessment is necessary to ensure that fund beneficiaries, including applicants under ~~section 4(c)~~ **section 4** of this chapter, continue to receive compensation in a timely manner for a reasonable prospective period, the board shall send notice not later than October 1 in any year to:

(1) all insurance carriers and other entities insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or the death of their employees under this article; and

(2) each employer carrying the employer's own risk; stating that an assessment is necessary. After June 30, 1999, the board may conduct an assessment under this subsection not more than one (1) time annually. Every insurance carrier and other entity insuring or providing coverage to employers who are or may be liable under this article to pay compensation for personal injuries to or death of their employees under this article and every employer carrying the employer's own risk, shall, within thirty (30) days of the board sending

C  
o  
p  
y





notice under this subsection, pay to the worker's compensation board for the benefit of the fund an assessed amount that may not exceed two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding the due date of such payment. For the purposes of calculating the assessment under this subsection, the board may consider payments for temporary total disability, temporary partial disability, permanent total impairment, permanent partial impairment, or death of an employee. The board may not consider payments for medical benefits in calculating an assessment under this subsection. If the amount to the credit of the second injury fund on or before October 1 of any year exceeds one million dollars (\$1,000,000), the assessment allowed under this subsection shall not be assessed or collected during the ensuing year. But when on or before October 1 of any year the amount to the credit of the fund is less than one million dollars (\$1,000,000), the payments of not more than two and one-half percent (2.5%) of the total amount of all worker's compensation paid to injured employees or their beneficiaries under IC 22-3-2 through IC 22-3-6 for the calendar year next preceding that date shall be resumed and paid into the fund. The board may not use an assessment rate greater than twenty-five hundredths of one percent (0.25%) above the amount recommended by the study performed before the assessment.

(d) The board shall enter into a contract with an actuary or another qualified firm that has experience in calculating worker's compensation liabilities. Not later than September 1 of each year, the actuary or other qualified firm shall calculate the recommended funding level of the fund based on the previous year's claims and inform the board of the results of the calculation. If the amount to the credit of the fund is less than the amount required under subsection (c), the board may conduct an assessment under subsection (c). The board shall pay the costs of the contract under this subsection with money in the fund.

(e) An assessment collected under subsection (c) on an employer who is not self-insured must be assessed through a surcharge based on the employer's premium. An assessment collected under subsection (c) does not constitute an element of loss, but for the purpose of collection shall be treated as a separate cost imposed upon insured employers. A premium surcharge under this subsection must be collected at the same time and in the same manner in which the premium for coverage is collected, and must be shown as a separate amount on a premium statement. A premium surcharge under this subsection must be excluded from the definition of premium for all purposes, including the

**C  
o  
p  
y**



1 computation of insurance producer commissions or premium taxes.  
 2 However, an insurer may cancel a worker's compensation policy for  
 3 nonpayment of the premium surcharge. A cancellation under this  
 4 subsection must be carried out under the statutes applicable to the  
 5 nonpayment of premiums.

6 (f) The sums shall be paid by the board to the treasurer of state, to  
 7 be deposited in a special account known as the second injury fund. The  
 8 funds are not a part of the general fund of the state. Any balance  
 9 remaining in the account at the end of any fiscal year shall not revert  
 10 to the general fund. The funds shall be used only for the payment of  
 11 awards of compensation and expense of medical examinations or  
 12 treatment made and ordered by the board and chargeable against the  
 13 fund pursuant to this section, and shall be paid for that purpose by the  
 14 treasurer of state upon award or order of the board.

15 (g) If an employee who is entitled to compensation under IC 22-3-2  
 16 through IC 22-3-6 either:

17 (1) exhausts the maximum benefits under section 22 of this  
 18 chapter without having received the full amount of award granted  
 19 to the employee under section 10 of this chapter; or

20 (2) exhausts the employee's benefits under section 10 of this  
 21 chapter;

22 then such employee may apply to the board, who may award the  
 23 employee compensation from the second injury fund established by this  
 24 section, as follows under subsection (h).

25 (h) An employee who has exhausted the employee's maximum  
 26 benefits under section 10 of this chapter may be awarded additional  
 27 compensation equal to sixty-six and two-thirds percent (66 2/3%) of the  
 28 employee's average weekly wage at the time of the employee's injury,  
 29 not to exceed the maximum then applicable under section 22 of this  
 30 chapter, for a period of not to exceed one hundred fifty (150) weeks  
 31 upon competent evidence sufficient to establish:

32 (1) that the employee is totally and permanently disabled from  
 33 causes and conditions of which there are or have been objective  
 34 conditions and symptoms proven that are not within the physical  
 35 or mental control of the employee; and

36 (2) that the employee is unable to support the employee in any  
 37 gainful employment, not associated with rehabilitative or  
 38 vocational therapy.

39 (i) The additional award may be renewed during the employee's total  
 40 and permanent disability after appropriate hearings by the board for  
 41 successive periods not to exceed one hundred fifty (150) weeks each.  
 42 The provisions of this section apply only to injuries occurring

C  
o  
p  
y



subsequent to April 1, 1950, for which awards have been or are in the future made by the board under section 10 of this chapter. Section 16 of this chapter does not apply to compensation awarded from the second injury fund under this section.

(j) All insurance carriers subject to an assessment under this section are required to provide to the board:

(1) not later than January 31 each calendar year; and

(2) not later than thirty (30) days after a change occurs;

the name, address, and electronic mail address of a representative authorized to receive the notice of an assessment.

SECTION 10. IC 22-3-3-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. ~~When an employee has been awarded or is entitled to an award of compensation for a definite period under IC 22-3-2 through IC 22-3-6 for an injury occurring prior to April 1, 1945, and dies from any other cause than such injury; payment of the unpaid balance of such compensation; not exceeding three hundred (300) weeks; shall be made to his dependents as defined in section 18 of this chapter; provided that where the compensable injury occurred on and after April 1, 1945, and prior to April 1, 1951; the maximum shall not exceed three hundred fifty (350) weeks.~~ (a) With respect to any such an injury occurring on and after April 1, 1951, **and before July 1, 2004**, the maximum **compensation** shall not exceed three hundred fifty (350) weeks for dependents of the second or third class and the maximum **compensation** shall not exceed five hundred (500) weeks for dependents of the first class.

(b) **For injuries occurring after June 30, 2004, the total compensation paid under section 17 of this chapter is the greater of:**

(1) **twenty (20) years of weekly benefits; or**

(2) **two hundred fifty thousand dollars (\$250,000).**

(c) **The total compensation paid under subsection (b) is reduced by the amount of the compensation paid to the employee before the employee's death.**

SECTION 11. IC 22-3-3-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 17. ~~On and after April 1, 1965; and prior to April 1, 1969; when death results from an injury within four hundred fifty (450) weeks; there shall be paid to total dependent of said deceased; as determined by IC 22-3-3-18, 19 and 20; a weekly compensation amounting to sixty percent (60%) of the deceased's average weekly wage; until compensation so paid; when added to any compensation paid to deceased employee; shall equal four hundred fifty (450) weeks; and to partial dependents as hereinafter~~

C  
o  
p  
y



1 provided:

2 On and after April 1, 1969; and prior to July 1, 1971, when death  
3 results from an injury within five hundred (500) weeks, there shall be  
4 paid to the total dependents of said deceased, as determined by the  
5 provisions of IC 22-3-3-18, 19 and 20, weekly compensation  
6 amounting to sixty percent (60%) of the deceased's average weekly  
7 wage; until the compensation so paid, when added to any compensation  
8 paid to the deceased employee, shall equal five hundred (500) weeks;  
9 and to partial dependents as hereinafter provided:

10 On and after July 1, 1971, and prior to July 1, 1974, when death  
11 results from an injury within five hundred (500) weeks, there shall be  
12 paid to the total dependents of said deceased, as determined by the  
13 provisions of IC 22-3-3-18, 19 and 20, weekly compensation  
14 amounting to sixty percent (60%) of the deceased's average weekly  
15 wage; not to exceed one hundred dollars (\$100) average weekly wages;  
16 until the compensation so paid, when added to any compensation paid  
17 to the deceased employee, shall equal five hundred (500) weeks; and  
18 to partial dependents as hereinafter provided:

19 On and after July 1, 1974; and before July 1, 1976, when death  
20 results from an injury within five hundred (500) weeks, there shall be  
21 paid the total dependents of the deceased, as determined by the  
22 provisions of sections 18, 19 and 20 of this chapter, weekly  
23 compensation amounting to sixty-six and two-thirds percent ( $66\frac{2}{3}\%$ )  
24 of the deceased's average weekly wage; not to exceed a maximum of  
25 one hundred thirty-five dollars (\$135) average weekly wages; until the  
26 compensation so paid, when added to any compensation paid to the  
27 deceased employee, shall equal five hundred (500) weeks; and to  
28 partial dependents as hereinafter provided: (a) On and after July 1,  
29 1976, and before July 1, 2004, when death results from an injury  
30 within five hundred (500) weeks, there shall be paid the total  
31 dependents of the deceased as determined by sections 18, 19, and 20  
32 of this chapter, weekly compensation amounting to sixty-six and  
33 two-thirds percent ( $66\frac{2}{3}\%$ ) of the deceased's average weekly wage,  
34 as defined by IC 22-3-3-22, **section 22 of this chapter**, until the  
35 compensation paid, when added to the compensation paid to the  
36 deceased employee, equals five hundred (500) weeks, and to partial  
37 dependents, as provided in sections 18 and 20 of this chapter.

38 (b) After June 30, 2004, when death results from an injury  
39 compensated under this chapter, persons who were wholly or  
40 partially dependent on the deceased employee as determined by  
41 sections 18, 19, and 20 of this chapter shall receive the same  
42 compensation as set forth in section 8 of this chapter for an

C  
o  
p  
y



employee who sustains an injury resulting in a total permanent disability for work.

(c) A spouse who is entitled to compensation under this chapter receives compensation as set forth in subsection (b) for life or until remarriage. If a spouse remarries and there are no children entitled to receive a benefit under this chapter, the spouse is entitled to a final lump sum payment equal to two (2) years of compensation as set forth in subsection (b).

(d) An unmarried child who:

(1) is entitled to compensation under this chapter; and

(2) was less than eighteen (18) years of age at the time of the employee's death;

is entitled to receive at least six (6) years of compensation as set forth in subsection (b).

(e) A dependent entitled to compensation under this section is entitled to the supplemental compensation determined and paid under section 8(e) of this chapter.

SECTION 12. IC 22-3-3-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. (a) The following persons are conclusively presumed to be wholly dependent for support upon a deceased employee and shall constitute the class known as presumptive dependents in section 18 of this chapter:

(1) A ~~wife upon a husband spouse:~~

(A) with whom ~~she is living at the time of his death; the employee lived; or upon~~

(B) for whom the laws of the state ~~impose imposed on the employee~~ the obligation of ~~her~~ support;

at ~~such the time of the employee's death.~~ The term "wife", "spouse" as used in this subdivision, shall ~~exclude chapter excludes~~ a common law husband or wife unless ~~such the~~ common law relationship was entered into before January 1, 1958, and, in addition, existed openly and notoriously for a period of not less than five (5) years immediately preceding the employee's death.

(2) A husband upon his wife with whom he is living at the time of her death. The term "husband", as used in this subdivision, shall exclude a common law husband unless such common law relationship was entered into before January 1, 1958, and, in addition, existed openly and notoriously for a period of not less than five (5) years immediately preceding the death.

(3) (2) An unmarried child ~~under the age of less than~~ twenty-one (21) years of age upon the parent with whom the child is living at

C  
o  
p  
y



the time of the death of ~~such~~ the parent.

~~(4)~~ (3) An unmarried child ~~under less than~~ twenty-one (21) years of age upon the parent:

(A) with whom the child may not be living at the time of the death of ~~such~~ the parent; but

(B) upon whom, at ~~such~~ the time of the parent's death, the laws of the state ~~impose~~ imposed the obligation to support ~~such~~ the child.

~~(5)~~ (4) A child ~~over the age of~~ at least twenty-one (21) years of age who:

(A) has never been married; and ~~who~~

(B) is either physically or mentally incapacitated from earning the child's own support;

upon a parent upon whom, at the time of the parent's death, the laws of the state ~~impose~~ imposed the obligation ~~of the~~ to support ~~of such~~ the unmarried child.

~~(6)~~ (5) A child ~~over the age of~~ at least twenty-one (21) years of age who:

(A) has never been married; and ~~who~~

(B) at the time of the death of the parent is keeping house for and living with ~~such~~ the parent; and is

(C) is not otherwise gainfully employed.

(b) As used in this section, the term "child" includes stepchildren, legally adopted children, posthumous children, and acknowledged children born out of wedlock. The term "parent" includes stepparents and parents by adoption.

(c) The dependency of a child under subsections ~~(a)(3)~~ and ~~(a)(4)~~ (a)(2) and (a)(3) shall terminate when the child attains the age of twenty-one (21).

(d) The dependency of any person as a presumptive dependent shall terminate upon the marriage of ~~such~~ the dependent subsequent to the death of the employee, and ~~such~~ the dependency shall not be reinstated by divorce. ~~However, for deaths from injuries occurring on and after July 1, 1977, a surviving spouse who is a presumptive dependent and who is the only surviving dependent of the deceased employee is entitled to receive, upon remarriage before the expiration of the maximum statutory compensation period, a lump sum settlement equal to the smaller of one hundred four (104) weeks of compensation or the compensation for the remainder of the maximum statutory compensation period.~~

(e) The dependency of any child under subsection ~~(a)(6)~~ (a)(5) shall be terminated at ~~such time as~~ ~~such~~ when the dependent becomes

C  
o  
p  
y



gainfully employed or marries.

SECTION 13. IC 22-3-3-22, AS AMENDED BY P.L.31-2000, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 22. (a) In computing the compensation under this law with respect to injuries occurring on and after April 1, 1963, and prior to April 1, 1965, the average weekly wages shall be considered to be not more than seventy dollars (\$70) nor less than thirty dollars (\$30). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1965, and prior to April 1, 1967, the average weekly wages shall be considered to be not more than seventy-five dollars (\$75) and not less than thirty dollars (\$30). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1967, and prior to April 1, 1969, the average weekly wages shall be considered to be not more than eighty-five dollars (\$85) and not less than thirty-five dollars (\$35). In computing the compensation under this law with respect to injuries occurring on and after April 1, 1969, and prior to July 1, 1971, the average weekly wages shall be considered to be not more than ninety-five dollars (\$95) and not less than thirty-five dollars (\$35). In computing the compensation under this law with respect to injuries occurring on and after July 1, 1971, and prior to July 1, 1974, the average weekly wages shall be considered to be: (A) Not more than: (1) one hundred dollars (\$100) if no dependents; (2) one hundred five dollars (\$105) if one (1) dependent; (3) one hundred ten dollars (\$110) if two (2) dependents; (4) one hundred fifteen dollars (\$115) if three (3) dependents; (5) one hundred twenty dollars (\$120) if four (4) dependents; and (6) one hundred twenty-five dollars (\$125) if five (5) or more dependents; and (B) Not less than thirty-five dollars (\$35). In computing compensation for temporary total disability, temporary partial disability, and total permanent disability under this law with respect to injuries occurring on and after July 1, 1974, and before July 1, 1976, the average weekly wages shall be considered to be (A) not more than one hundred thirty-five dollars (\$135); and (B) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall in no case exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability, temporary partial disability and total permanent disability under this law with respect to injuries occurring on and after July 1, 1976, and before July 1, 1977, the average weekly wages shall be considered to be (1) not more than one hundred fifty-six dollars (\$156) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of

C  
o  
p  
y



the employee at the time of the injury. In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1977, and before July 1, 1979; the average weekly wages are considered to be (1) not more than one hundred eighty dollars (\$180); and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable may not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1979, and before July 1, 1980; the average weekly wages are considered to be (1) not more than one hundred ninety-five dollars (\$195); and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1980, and before July 1, 1983; the average weekly wages are considered to be (1) not more than two hundred ten dollars (\$210); and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1983, and before July 1, 1984; the average weekly wages are considered to be (1) not more than two hundred thirty-four dollars (\$234) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1984, and before July 1, 1985; the average weekly wages are considered to be (1) not more than two hundred forty-nine dollars (\$249) and (2) not less than seventy-five dollars (\$75). However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury. (a) In computing compensation for temporary total disability; temporary partial disability; and total permanent disability; with respect to injuries occurring on and after July 1, 1985, and before July 1, 1986, the average weekly wages are considered to be:

- (1) not more than two hundred sixty-seven dollars (\$267); and
- (2) not less than seventy-five dollars (\$75). However, the weekly

**C**  
**O**  
**P**  
**Y**





compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(b) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1986, and before July 1, 1988, the average weekly wages are considered to be:

(1) not more than two hundred eighty-five dollars (\$285); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(c) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1988, and before July 1, 1989, the average weekly wages are considered to be:

(1) not more than three hundred eighty-four dollars (\$384); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(d) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1989, and before July 1, 1990, the average weekly wages are considered to be:

(1) not more than four hundred eleven dollars (\$411); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(e) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1990, and before July 1, 1991, the average weekly wages are considered to be:

(1) not more than four hundred forty-one dollars (\$441); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(f) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1991, and before July 1, 1992, the average weekly wages are considered to be:

(1) not more than four hundred ninety-two dollars (\$492); and

(2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

C  
o  
p  
y



(g) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1992, and before July 1, 1993, the average weekly wages are considered to be:

- (1) not more than five hundred forty dollars (\$540); and
- (2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(h) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be:

- (1) not more than five hundred ninety-one dollars (\$591); and
- (2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

(i) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to injuries occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be:

- (1) not more than six hundred forty-two dollars (\$642); and
- (2) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

~~(b)~~ (j) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

- (1) with respect to injuries occurring on and after July 1, 1997, and before July 1, 1998:

- (A) not more than six hundred seventy-two dollars (\$672); and
- (B) not less than seventy-five dollars (\$75);

- (2) with respect to injuries occurring on and after July 1, 1998, and before July 1, 1999:

- (A) not more than seven hundred two dollars (\$702); and
- (B) not less than seventy-five dollars (\$75);

- (3) with respect to injuries occurring on and after July 1, 1999, and before July 1, 2000:

- (A) not more than seven hundred thirty-two dollars (\$732);
- and

- (B) not less than seventy-five dollars (\$75);

- (4) with respect to injuries occurring on and after July 1, 2000, and before July 1, 2001:

C  
o  
p  
y



(A) not more than seven hundred sixty-two dollars (\$762); and

(B) not less than seventy-five dollars (\$75);

(5) with respect to injuries occurring on and after July 1, 2001, and before July 1, 2002:

(A) not more than eight hundred twenty-two dollars (\$822); and

(B) not less than seventy-five dollars (\$75); and

(6) with respect to injuries occurring on and after July 1, 2002, and before July 1, 2004:

(A) not more than eight hundred eighty-two dollars (\$882); and

(B) not less than seventy-five dollars (\$75).

However, the weekly compensation payable shall not exceed the average weekly wages of the employee at the time of the injury.

**(k) In computing compensation for temporary total disability, temporary partial disability, permanent partial disability, and total permanent disability, for injuries occurring after June 30, 2004, the average weekly wages are computed under IC 22-3-6-1, and the weekly compensation payable is determined under:**

**(1) section 8 of this chapter for temporary total disability and permanent total disability;**

**(2) section 9 of this chapter for temporary partial disability; or**

**(3) section 10.3 of this chapter for permanent partial disability.**

(c) For the purpose of this section only and with respect to injuries occurring on and after July 1, 1971, and prior to July 1, 1974, only, the term "dependent" as used in this section shall mean persons defined as presumptive dependents under section 19 of this chapter, except that such dependency shall be determined as of the date of the injury to the employee.

(d) With respect to any injury occurring on and after April 1, 1955, and prior to April 1, 1957, the maximum compensation exclusive of medical benefits, which shall be paid for an injury under any provisions of this law or under any combination of its provisions shall not exceed twelve thousand five hundred dollars (\$12,500) in any case. With respect to any injury occurring on and after April 1, 1957 and prior to April 1, 1963, the maximum compensation exclusive of medical benefits, which shall be paid for an injury under any provision of this law or under any combination of its provisions shall not exceed fifteen thousand dollars (\$15,000) in any case. With respect to any injury occurring on and after April 1, 1963, and prior to April 1, 1965, the

C  
o  
p  
y



1 maximum compensation exclusive of medical benefits; which shall be  
 2 paid for an injury under any provision of this law or under any  
 3 combination of its provisions shall not exceed sixteen thousand five  
 4 hundred dollars (\$16,500) in any case. With respect to any injury  
 5 occurring on and after April 1, 1965; and prior to April 1, 1967; the  
 6 maximum compensation exclusive of medical benefits which shall be  
 7 paid for any injury under any provision of this law or any combination  
 8 of provisions shall not exceed twenty thousand dollars (\$20,000) in any  
 9 case. With respect to any injury occurring on and after April 1, 1967;  
 10 and prior to July 1, 1971; the maximum compensation exclusive of  
 11 medical benefits which shall be paid for an injury under any provision  
 12 of this law or any combination of provisions shall not exceed  
 13 twenty-five thousand dollars (\$25,000) in any case. With respect to any  
 14 injury occurring on and after July 1, 1971; and prior to July 1, 1974; the  
 15 maximum compensation exclusive of medical benefits which shall be  
 16 paid for any injury under any provision of this law or any combination  
 17 of provisions shall not exceed thirty thousand dollars (\$30,000) in any  
 18 case. With respect to any injury occurring on and after July 1, 1974;  
 19 and before July 1, 1976; the maximum compensation exclusive of  
 20 medical benefits which shall be paid for an injury under any provision  
 21 of this law or any combination of provisions shall not exceed forty-five  
 22 thousand dollars (\$45,000) in any case. With respect to an injury  
 23 occurring on and after July 1, 1976; and before July 1, 1977; the  
 24 maximum compensation; exclusive of medical benefits; which shall be  
 25 paid for any injury under any provision of this law or any combination  
 26 of provisions shall not exceed fifty-two thousand dollars (\$52,000) in  
 27 any case. With respect to any injury occurring on and after July 1,  
 28 1977; and before July 1, 1979; the maximum compensation; exclusive  
 29 of medical benefits; which may be paid for an injury under any  
 30 provision of this law or any combination of provisions may not exceed  
 31 sixty thousand dollars (\$60,000) in any case. With respect to any injury  
 32 occurring on and after July 1, 1979; and before July 1, 1980; the  
 33 maximum compensation; exclusive of medical benefits; which may be  
 34 paid for an injury under any provisions of this law or any combination  
 35 of provisions may not exceed sixty-five thousand dollars (\$65,000) in  
 36 any case. With respect to any injury occurring on and after July 1,  
 37 1980; and before July 1, 1983; the maximum compensation; exclusive  
 38 of medical benefits; which may be paid for an injury under any  
 39 provisions of this law or any combination of provisions may not exceed  
 40 seventy thousand dollars (\$70,000) in any case. With respect to any  
 41 injury occurring on and after July 1, 1983; and before July 1, 1984; the  
 42 maximum compensation; exclusive of medical benefits; which may be

C  
 o  
 p  
 y



1 paid for an injury under any provisions of this law or any combination  
 2 of provisions may not exceed seventy-eight thousand dollars (\$78,000)  
 3 in any case. With respect to any injury occurring on and after July 1,  
 4 1984, and before July 1, 1985, the maximum compensation, exclusive  
 5 of medical benefits, which may be paid for an injury under any  
 6 provisions of this law or any combination of provisions may not exceed  
 7 eighty-three thousand dollars (\$83,000) in any case.

8 (l) With respect to any injury occurring on and after July 1, 1985,  
 9 and before July 1, 1986, the maximum compensation, exclusive of  
 10 medical benefits, which may be paid for an injury under any provisions  
 11 of this law or any combination of provisions may not exceed  
 12 eighty-nine thousand dollars (\$89,000) in any case.

13 (m) With respect to any injury occurring on and after July 1, 1986,  
 14 and before July 1, 1988, the maximum compensation, exclusive of  
 15 medical benefits, which may be paid for an injury under any provisions  
 16 of this law or any combination of provisions may not exceed  
 17 ninety-five thousand dollars (\$95,000) in any case.

18 (n) With respect to any injury occurring on and after July 1, 1988,  
 19 and before July 1, 1989, the maximum compensation, exclusive of  
 20 medical benefits, which may be paid for an injury under any provisions  
 21 of this law or any combination of provisions may not exceed one  
 22 hundred twenty-eight thousand dollars (\$128,000) in any case.

23 (o) With respect to any injury occurring on and after July 1, 1989,  
 24 and before July 1, 1990, the maximum compensation, exclusive of  
 25 medical benefits, which may be paid for an injury under any provisions  
 26 of this law or any combination of provisions may not exceed one  
 27 hundred thirty-seven thousand dollars (\$137,000) in any case.

28 (p) With respect to any injury occurring on and after July 1, 1990,  
 29 and before July 1, 1991, the maximum compensation, exclusive of  
 30 medical benefits, which may be paid for an injury under any provisions  
 31 of this law or any combination of provisions may not exceed one  
 32 hundred forty-seven thousand dollars (\$147,000) in any case.

33 (q) With respect to any injury occurring on and after July 1, 1991,  
 34 and before July 1, 1992, the maximum compensation, exclusive of  
 35 medical benefits, that may be paid for an injury under any provisions  
 36 of this law or any combination of provisions may not exceed one  
 37 hundred sixty-four thousand dollars (\$164,000) in any case.

38 (r) With respect to any injury occurring on and after July 1, 1992,  
 39 and before July 1, 1993, the maximum compensation, exclusive of  
 40 medical benefits, that may be paid for an injury under any provisions  
 41 of this law or any combination of provisions may not exceed one  
 42 hundred eighty thousand dollars (\$180,000) in any case.

C  
o  
p  
y



(s) With respect to any injury occurring on and after July 1, 1993, and before July 1, 1994, the maximum compensation, exclusive of medical benefits, that may be paid for an injury under any provisions of this law or any combination of provisions may not exceed one hundred ninety-seven thousand dollars (\$197,000) in any case.

(t) With respect to any injury occurring on and after July 1, 1994, and before July 1, 1997, the maximum compensation, exclusive of medical benefits, which may be paid for an injury under any provisions of this law or any combination of provisions may not exceed two hundred fourteen thousand dollars (\$214,000) in any case.

~~(e)~~ (u) The maximum compensation, exclusive of medical benefits, that may be paid for an injury under any provision of this law or any combination of provisions may not exceed the following amounts in any case:

(1) With respect to an injury occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).

(2) With respect to an injury occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).

(3) With respect to an injury occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).

(4) With respect to an injury occurring on and after July 1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).

(5) With respect to an injury occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).

(6) With respect to an injury occurring on and after July 1, 2002, **and before July 1, 2004**, two hundred ninety-four thousand dollars (\$294,000).

(v) **For an injury occurring after June 30, 2004, the maximum compensation, exclusive of medical benefits, under this article is the following:**

(1) **For temporary total disability and temporary partial disability, the weekly compensation continues as long as the disability lasts.**

(2) **For permanent partial disability, the weekly compensation payable is determined under section 10.3 of this chapter.**

(3) **For permanent total disability, the weekly compensation is payable for life.**

C  
o  
p  
y



SECTION 14. IC 22-3-3-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 32. **This section applies to injuries occurring before July 1, 2004.** The provisions of this article may not be construed to result in an award of benefits in which the number of weeks paid and to be paid for temporary total disability, temporary partial disability, or permanent total disability combined exceeds five hundred (500) weeks. This section shall not be construed to prevent a person who is permanently totally disabled from applying for an award under ~~IC 22-3-3-13~~; **section 13 of this chapter.** However, in case of permanent total disability resulting from an injury occurring on or after January 1, 1998, **and before July 1, 2004**, the minimum total benefit shall not be less than seventy-five thousand dollars (\$75,000).

SECTION 15. IC 22-3-4-15 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 15. (a) **The rate adjustment fund is established as an account within the state general fund for the purpose of paying a supplemental benefit to:**

- (1) **individuals permanently and totally disabled for work who are receiving compensation under IC 22-3-3-8 or IC 22-3-7-16(f); and**
- (2) **dependents of fatally injured workers who are receiving compensation under IC 22-3-3-17 or IC 22-3-7-11.**

(b) **The fund consists of the following:**

- (1) **Assessments collected under section 16 of this chapter.**
- (2) **Money received from any other source.**
- (3) **Interest earned from money in the fund.**
- (4) **Earnings acquired through the use of money from the fund.**
- (5) **Interest and penalties collected.**

(c) **The fund shall be administered by the worker's compensation board. The expenses of administering the fund shall be paid from money in the fund.**

(d) **Money in the fund is annually appropriated to the worker's compensation board and shall be used to carry out the purposes listed in subsection (a).**

(e) **The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.**

(f) **Money in the fund at the end of a state fiscal year does not revert to any other account in the state general fund.**

SECTION 16. IC 22-3-4-16 IS ADDED TO THE INDIANA CODE

C  
o  
p  
y



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
2 1, 2004]: Sec. 16. (a) As used in this section, "board" refers to the  
3 worker's compensation board established by IC 22-3-1-1.

4 (b) As used in this section, "compensation payments" include  
5 payments made by an employer for:

6 (1) temporary total disability under IC 22-3-3-8 or  
7 IC 22-3-7-16(f);

8 (2) temporary partial disability under IC 22-3-3-9 or  
9 IC 22-3-7-16(k);

10 (3) permanent partial disability under IC 22-3-3-10 or  
11 IC 22-3-7-16.3;

12 (4) permanent total disability under IC 22-3-3-8 or  
13 IC 22-3-7-16(f); or

14 (5) compensation to dependents under IC 22-3-3-17 or  
15 IC 22-3-7-11.

16 The term does not include payments for medical treatment under  
17 IC 22-3-3-4 or IC 22-3-7-17.

18 (c) Not later than October 1, 2004, and October 1 of each year  
19 thereafter:

20 (1) each employer that is required under IC 22-3-5-1 or  
21 IC 22-3-7-34 to insure or keep insured for employer liability  
22 under IC 22-3-2 through IC 22-3-7; and

23 (2) each employer carrying the employer's own risk under  
24 IC 22-3-5-1 or IC 22-3-7-34;

25 shall pay to the board for the benefit of the rate adjustment fund  
26 established by section 15 of this chapter an amount equal to  
27 seventy-five hundredths percent (0.75%) of all compensation  
28 payments paid by the employer during the preceding calendar  
29 year.

30 (d) The board shall deposit the amounts collected under  
31 subsection (c) in the rate adjustment fund established by section 15  
32 of this chapter.

33 SECTION 17. IC 22-3-5-6, AS AMENDED BY P.L.202-2001,  
34 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
35 JULY 1, 2004]: Sec. 6. (a) The worker's compensation ~~supplemental~~  
36 administrative fund is established for the ~~purpose of~~ following  
37 purposes:

38 (1) Carrying out the administrative purposes and functions of the  
39 worker's compensation board.

40 (2) Administering the costs of the worker's compensation law  
41 (IC 22-3-2 through IC 22-3-6) and the occupational diseases  
42 law (IC 22-3-7).

C  
o  
p  
y





(b) The fund consists of the following:

(1) Surcharges and assessments collected under section 7 of this chapter.

(2) Fees collected from employers under sections 1 through 2 of this chapter. ~~and from~~

(3) Fees collected under IC 22-3-2-14.5 and IC 22-3-7-34.5.

(4) Money received from any other source.

(5) Interest earned from money in the fund.

(6) Earnings acquired through the use of money from the fund.

(7) Interest and penalties collected.

(c) The fund shall be administered by the worker's compensation board. ~~The expenses of administering the fund shall be paid from money in the fund.~~

(d) Money in the fund is annually appropriated to the worker's compensation board and shall be used ~~for all expenses incurred by the worker's compensation board to carry out the purposes listed in subsection (a).~~

(e) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Interest that accrues from these investments shall be deposited in the fund.

(b) The money in the fund is not to be used to replace funds otherwise appropriated to the board. (f) Money in the fund at the end of the state fiscal year does not revert to the state general fund.

SECTION 18. IC 22-3-5-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 7. (a) As used in this section, "board" refers to the worker's compensation board established by IC 22-3-1-1.

(b) Not later than May 1 of each year, the board, subject to the budget agency's approval, shall calculate the recommended funding level of the worker's compensation administrative fund established by section 6 of this chapter based on the previous fiscal year's expenses of adequately administering and the projected increases necessary to adequately administer the worker's compensation system.

(c) Not later than June 1 of each year, the board shall send notice to:

(1) all insurance carriers and other entities insuring or providing coverage to employers that are required under section 1 of this chapter or IC 22-3-7-34 to insure or keep insured for employer liability under IC 22-3-2 through

C  
o  
p  
y



1           **IC 22-3-7; and**

2           **(2) each employer carrying the employer's own risk under**  
 3           **section 1 of this chapter or IC 22-3-7-34;**  
 4           **of the amount of the assessment as determined under subsection**  
 5           **(b).**

6           **(d) Not later than thirty (30) days after receiving notice from the**  
 7           **board, every insurer described in subsection (c)(1) and every**  
 8           **employer described in subsection (c)(2) shall pay the assessment**  
 9           **to the board for the benefit of the worker's compensation**  
 10           **administrative fund created by section 6 of this chapter.**

11           **(e) An assessment collected under subsection (d) on an employer**  
 12           **that is not self-insured must be assessed through a surcharge based**  
 13           **on the employer's premium. The surcharge collected under**  
 14           **subsection (d) does not constitute an element of loss, but for the**  
 15           **purpose of collection shall be treated as a separate cost imposed on**  
 16           **insured employers. The premium surcharge under this section**  
 17           **shall be collected at the same time and in the same manner in**  
 18           **which the premium for coverage is collected and must be shown as**  
 19           **a separate amount on a premium statement. A premium surcharge**  
 20           **under this section must be excluded from the definition of premium**  
 21           **for all purposes, including the computation of agent commissions**  
 22           **or premium taxes. However, an insurer may cancel a worker's**  
 23           **compensation policy for nonpayment of the premium surcharge**  
 24           **under the statutes applicable to the nonpayment of premiums.**

25           **(f) The board shall deposit the amounts collected under**  
 26           **subsection (d) in the worker's compensation administrative fund**  
 27           **established by section 6 of this chapter.**

28           **SECTION 19. IC 22-3-6-1, AS AMENDED BY P.L.202-2001,**  
 29           **SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**  
 30           **JULY 1, 2004]: Sec. 1. In IC 22-3-2 through IC 22-3-6, unless the**  
 31           **context otherwise requires:**

32           **(a) "Employer" includes the state and any political subdivision, any**  
 33           **municipal corporation within the state, any individual or the legal**  
 34           **representative of a deceased individual, firm, association, limited**  
 35           **liability company, or corporation or the receiver or trustee of the same,**  
 36           **using the services of another for pay. A parent corporation and its**  
 37           **subsidiaries shall each be considered joint employers of the**  
 38           **corporation's, the parent's, or the subsidiaries' employees for purposes**  
 39           **of IC 22-3-2-6 and IC 22-3-3-31. Both a lessor and a lessee of**  
 40           **employees shall each be considered joint employers of the employees**  
 41           **provided by the lessor to the lessee for purposes of IC 22-3-2-6 and**  
 42           **IC 22-3-3-31. If the employer is insured, the term includes the**

**C**  
**O**  
**P**  
**Y**



1 employer's insurer so far as applicable. However, the inclusion of an  
 2 employer's insurer within this definition does not allow an employer's  
 3 insurer to avoid payment for services rendered to an employee with the  
 4 approval of the employer. The term also includes an employer that  
 5 provides on-the-job training under the federal School to Work  
 6 Opportunities Act (20 U.S.C. 6101 et seq.) to the extent set forth in  
 7 IC 22-3-2-2.5.

8 (b) "Employee" means every person, including a minor, in the  
 9 service of another, under any contract of hire or apprenticeship, written  
 10 or implied, except one whose employment is both casual and not in the  
 11 usual course of the trade, business, occupation, or profession of the  
 12 employer.

13 (1) An executive officer elected or appointed and empowered in  
 14 accordance with the charter and bylaws of a corporation, other  
 15 than a municipal corporation or governmental subdivision or a  
 16 charitable, religious, educational, or other nonprofit corporation,  
 17 is an employee of the corporation under IC 22-3-2 through  
 18 IC 22-3-6.

19 (2) An executive officer of a municipal corporation or other  
 20 governmental subdivision or of a charitable, religious,  
 21 educational, or other nonprofit corporation may, notwithstanding  
 22 any other provision of IC 22-3-2 through IC 22-3-6, be brought  
 23 within the coverage of its insurance contract by the corporation by  
 24 specifically including the executive officer in the contract of  
 25 insurance. The election to bring the executive officer within the  
 26 coverage shall continue for the period the contract of insurance is  
 27 in effect, and during this period, the executive officers thus  
 28 brought within the coverage of the insurance contract are  
 29 employees of the corporation under IC 22-3-2 through IC 22-3-6.

30 (3) Any reference to an employee who has been injured, when the  
 31 employee is dead, also includes the employee's legal  
 32 representatives, dependents, and other persons to whom  
 33 compensation may be payable.

34 (4) An owner of a sole proprietorship may elect to include the  
 35 owner as an employee under IC 22-3-2 through IC 22-3-6 if the  
 36 owner is actually engaged in the proprietorship business. If the  
 37 owner makes this election, the owner must serve upon the owner's  
 38 insurance carrier and upon the board written notice of the  
 39 election. No owner of a sole proprietorship may be considered an  
 40 employee under IC 22-3-2 through IC 22-3-6 until the notice has  
 41 been received. If the owner of a sole proprietorship is an  
 42 independent contractor in the construction trades and does not

C  
o  
p  
y



1 make the election provided under this subdivision, the owner  
2 must obtain an affidavit of exemption under IC 22-3-2-14.5.

3 (5) A partner in a partnership may elect to include the partner as  
4 an employee under IC 22-3-2 through IC 22-3-6 if the partner is  
5 actually engaged in the partnership business. If a partner makes  
6 this election, the partner must serve upon the partner's insurance  
7 carrier and upon the board written notice of the election. No  
8 partner may be considered an employee under IC 22-3-2 through  
9 IC 22-3-6 until the notice has been received. If a partner in a  
10 partnership is an independent contractor in the construction trades  
11 and does not make the election provided under this subdivision,  
12 the partner must obtain an affidavit of exemption under  
13 IC 22-3-2-14.5.

14 (6) Real estate professionals are not employees under IC 22-3-2  
15 through IC 22-3-6 if:

- 16 (A) they are licensed real estate agents;
- 17 (B) substantially all their remuneration is directly related to
- 18 sales volume and not the number of hours worked; and
- 19 (C) they have written agreements with real estate brokers
- 20 stating that they are not to be treated as employees for tax
- 21 purposes.

22 (7) A person is an independent contractor in the construction  
23 trades and not an employee under IC 22-3-2 through IC 22-3-6 if  
24 the person is an independent contractor under the guidelines of  
25 the United States Internal Revenue Service.

26 (8) An owner-operator that provides a motor vehicle and the  
27 services of a driver under a written contract that is subject to  
28 IC 8-2.1-24-23, 45 IAC 16-1-13, or 49 CFR 1057, to a motor  
29 carrier is not an employee of the motor carrier for purposes of  
30 IC 22-3-2 through IC 22-3-6. The owner-operator may elect to be  
31 covered and have the owner-operator's drivers covered under a  
32 worker's compensation insurance policy or authorized  
33 self-insurance that insures the motor carrier if the owner-operator  
34 pays the premiums as requested by the motor carrier. An election  
35 by an owner-operator under this subdivision does not terminate  
36 the independent contractor status of the owner-operator for any  
37 purpose other than the purpose of this subdivision.

38 (9) A member or manager in a limited liability company may elect  
39 to include the member or manager as an employee under  
40 IC 22-3-2 through IC 22-3-6 if the member or manager is actually  
41 engaged in the limited liability company business. If a member or  
42 manager makes this election, the member or manager must serve

C  
o  
p  
y



upon the member's or manager's insurance carrier and upon the board written notice of the election. A member or manager may not be considered an employee under IC 22-3-2 through IC 22-3-6 until the notice has been received.

(10) An unpaid participant under the federal School to Work Opportunities Act (20 U.S.C. 6101 et seq.) is an employee to the extent set forth in IC 22-3-2-2.5.

(c) "Minor" means an individual who has not reached seventeen (17) years of age.

(1) Unless otherwise provided in this subsection, a minor employee shall be considered as being of full age for all purposes of IC 22-3-2 through IC 22-3-6.

(2) If the employee is a minor who, at the time of the accident, is employed, required, suffered, or permitted to work in violation of IC 20-8.1-4-25, the amount of compensation and death benefits, as provided in IC 22-3-2 through IC 22-3-6, shall be double the amount which would otherwise be recoverable. The insurance carrier shall be liable on its policy for one-half (1/2) of the compensation or benefits that may be payable on account of the injury or death of the minor, and the employer shall be liable for the other one-half (1/2) of the compensation or benefits. If the employee is a minor who is not less than sixteen (16) years of age and who has not reached seventeen (17) years of age and who at the time of the accident is employed, suffered, or permitted to work at any occupation which is not prohibited by law, this subdivision does not apply.

(3) A minor employee who, at the time of the accident, is a student performing services for an employer as part of an approved program under IC 20-10.1-6-7 shall be considered a full-time employee for the purpose of computing compensation for permanent impairment under IC 22-3-3-10. The average weekly wages for such a student shall be calculated as provided in subsection (d)(4).

(4) The rights and remedies granted in this subsection to a minor under IC 22-3-2 through IC 22-3-6 on account of personal injury or death by accident shall exclude all rights and remedies of the minor, the minor's parents, or the minor's personal representatives, dependents, or next of kin at common law, statutory or otherwise, on account of the injury or death. This subsection does not apply to minors who have reached seventeen (17) years of age.

(d) "Average weekly wages" means the earnings of the injured

C  
o  
p  
y



employee in the employment in which the employee was working at the time of the injury during the period of fifty-two (52) weeks immediately preceding the date of injury, divided by fifty-two (52), except as follows:

(1) If the injured employee lost seven (7) or more calendar days during this period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted.

(2) Where the employment prior to the injury extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employee's employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages, as defined in this subsection, regard shall be had to the average weekly amount which during the fifty-two (52) weeks previous to the injury was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in the same class of employment in the same district.

(3) Wherever allowances of any character made to an employee in lieu of wages are a specified part of the wage contract, they shall be deemed a part of his earnings.

(4) In computing the average weekly wages to be used in calculating an award for permanent impairment under IC 22-3-3-10 for a student employee in an approved training program under IC 20-10.1-6-7, the following formula shall be used. Calculate the product of:

- (A) the student employee's hourly wage rate; multiplied by
- (B) forty (40) hours.

The result obtained is the amount of the average weekly wages for the student employee.

(e) "Injury" and "personal injury" mean only injury by accident arising out of and in the course of the employment and do not include a disease in any form except as it results from the injury.

(f) "Billing review service" refers to a person or an entity that reviews a medical service provider's bills or statements for the purpose of determining pecuniary liability. The term includes an employer's

C  
o  
p  
y



worker's compensation insurance carrier if the insurance carrier performs such a review.

(g) "Billing review standard" means the data used by a billing review service to determine pecuniary liability.

(h) "Community" means a geographic service area based on zip code districts defined by the United States Postal Service according to the following groupings:

(1) The geographic service area served by zip codes with the first three (3) digits 463 and 464.

(2) The geographic service area served by zip codes with the first three (3) digits 465 and 466.

(3) The geographic service area served by zip codes with the first three (3) digits 467 and 468.

(4) The geographic service area served by zip codes with the first three (3) digits 469 and 479.

(5) The geographic service area served by zip codes with the first three (3) digits 460, 461 (except 46107), and 473.

(6) The geographic service area served by the 46107 zip code and zip codes with the first three (3) digits 462.

(7) The geographic service area served by zip codes with the first three (3) digits 470, 471, 472, 474, and 478.

(8) The geographic service area served by zip codes with the first three (3) digits 475, 476, and 477.

(i) "Medical service provider" refers to a person or an entity that provides medical services, treatment, or supplies to an employee under IC 22-3-2 through IC 22-3-6.

(j) "Pecuniary liability" means the responsibility of an employer or the employer's insurance carrier for the payment of the charges for each specific service or product for human medical treatment provided under IC 22-3-2 through IC 22-3-6 in a defined community, equal to or less than the charges made by medical service providers at the eightieth percentile in the same community for like services or products.

**(k) "State average weekly wage" means the average of the earnings of the employees in all occupations subject to IC 22-3-3 through IC 22-3-6 of all employers subject to IC 22-3-3 through IC 22-3-6 as determined and published by the worker's compensation board on January 1 and July 1 of each year, beginning July 1, 2004. The amount published is conclusive and applicable as the basis for computing compensation rates until the worker's compensation board's next determination and publication.**

SECTION 20. IC 22-3-7-11 IS AMENDED TO READ AS

C  
O  
P  
Y



FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. On and after April 1, 1957; and prior to April 1, 1967; when death results from an occupational disease within four hundred (400) weeks; there shall be paid to total dependents of said deceased; as determined by the provisions of IC 22-3-7-12, IC 22-3-7-13, IC 22-3-7-14, IC 22-3-7-15; a weekly compensation amounting to sixty (60) per centum of the deceased's average weekly wage until the compensation so paid when added to any compensation paid to the deceased employee shall equal four hundred (400) weeks; and to partial dependents as hereinafter provided:

On and after April 1, 1967; and prior to April 1, 1969; when death results from an occupational disease within four hundred fifty (450) weeks; there shall be paid to total dependents of said deceased; as determined by the provisions of IC 22-3-7-12, IC 22-3-7-13, IC 22-3-7-14, IC 22-3-7-15; a weekly compensation amounting to sixty (60) per centum of the deceased's average weekly wage; until the compensation so paid when added to any compensation paid to the deceased employee shall equal four hundred fifty (450) weeks; and to partial dependents as hereinafter provided:

On and after April 1, 1969; and prior to July 1, 1974; when death results from occupational disease within five hundred (500) weeks; there shall be paid to total dependents of said deceased; as determined by the provisions of IC 22-3-7-12, IC 22-3-7-13, IC 22-3-7-14, IC 22-3-7-15; a weekly compensation amounting to sixty (60) per centum of the deceased's average weekly wage; until the compensation so paid when added to any compensation paid to the deceased employee shall equal five hundred (500) weeks; and to partial dependents as hereinafter provided:

On and after July 1, 1974; and before July 1, 1976; when death results from occupational disease within five hundred (500) weeks; there shall be paid to total dependents of said deceased as determined by the provisions of IC 22-3-7-12, IC 22-3-7-13, IC 22-3-7-14, IC 22-3-7-15; a weekly compensation amounting to sixty-six and two-thirds ( $66 \frac{2}{3}$ ) per centum of the deceased's average weekly wage; up to one hundred thirty-five dollars (\$135.00) average weekly wages; until the compensation so paid when added to any compensation paid to the deceased employee shall equal five hundred (500) weeks; and to partial dependents as hereinafter provided:

**(a)** On and after July 1, 1976, and before July 1, 2004, when death results from occupational disease within five hundred (500) weeks, there shall be paid to total dependents of the deceased, as determined by the provisions of IC 22-3-7-12 through IC 22-3-7-15; **sections 12**

C  
o  
p  
y





through 15 of this chapter, a weekly compensation amounting to sixty-six and two-thirds percent (66 2/3%) of the deceased's average weekly wage, as defined in ~~IC 22-3-7-19~~, **section 19 of this chapter**, until the compensation paid, when added to compensation paid to the deceased employee, equals five hundred (500) weeks, and to partial dependents as provided in this chapter.

(b) After June 30, 2004, when death results from an occupational disease compensated under this chapter, persons who were wholly or partially dependent on the deceased employee as determined by sections 12 through 15 of this chapter shall receive the same compensation as set forth in section 16(f) of this chapter for an employee who sustains a disablement from an occupational disease resulting in total permanent disability.

(c) A spouse who is entitled to compensation under this chapter receives compensation as set forth in subsection (b) for life or until remarriage. If a spouse remarries and there are no children entitled to receive a benefit under this chapter, the spouse is entitled to a final lump sum payment equal to two (2) years of compensation as set forth in subsection (b).

(d) An unmarried child who:

- (1) is eligible to receive compensation under this chapter; and
- (2) was less than eighteen (18) years of age at the time of the employee's death;

is entitled to receive at least six (6) years of compensation as set forth in subsection (b).

(e) A dependent entitled to compensation under this section is entitled to the supplemental compensation determined and paid as set forth in section 16(i) of this chapter.

SECTION 21. IC 22-3-7-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 13. (a) The following persons are conclusively presumed to be wholly dependent for support upon a deceased employee and shall constitute the class known as presumptive dependents in section 12 of this chapter:

(1) A wife ~~upon a husband~~ spouse:

(A) with whom she is living at the time of his death, the employee lived; or upon

(B) on whom the laws of the state ~~impose~~ imposed on the employee the obligation of her support;

at such the time of the employee's death. The term "wife"; "spouse" as used in this subdivision, shall exclude chapter excludes a common law husband or wife unless such the common law relationship was entered into before January 1,

C  
o  
p  
y



1 1958, and, in addition, existed openly and notoriously for a period  
 2 of not less than five (5) years immediately preceding the  
 3 **employee's** death.

4 ~~(2) A husband upon his wife with whom he is living at the time of~~  
 5 ~~her death. The term "husband", as used in this subdivision, shall~~  
 6 ~~exclude a common law husband unless such common law~~  
 7 ~~relationship was entered into before January 1, 1958; and, in~~  
 8 ~~addition, existed openly and notoriously for a period of not less~~  
 9 ~~than five (5) years immediately preceding the death.~~

10 ~~(3) (2)~~ An unmarried child ~~under the age of less than~~ twenty-one  
 11 (21) years **of age** upon the parent with whom the child is living at  
 12 the time of the death of ~~such the~~ parent.

13 ~~(4) (3)~~ An unmarried child ~~under less than~~ twenty-one (21) years  
 14 **of age** upon the parent:

15 (A) with whom the child may not be living at the time of the  
 16 death of ~~such the~~ parent, but

17 (B) upon whom, at ~~such the~~ time **of the parent's death**, the  
 18 laws of the state ~~impose~~ **imposed** the obligation to support  
 19 ~~such the~~ child.

20 ~~(5) (4)~~ A child ~~over the age of at least~~ twenty-one (21) years **of**  
 21 **age** who:

22 (A) has never been married; and ~~who~~

23 (B) is either physically or mentally incapacitated from earning  
 24 the child's own support;

25 upon a parent upon whom, **at the time of the parent's death**, the  
 26 laws of the state ~~impose~~ **imposed** the obligation of the support of  
 27 ~~such the~~ unmarried child.

28 ~~(6) (5)~~ A child ~~over the age of at least~~ twenty-one (21) years **of**  
 29 **age** who:

30 (A) has never been married; and ~~who~~

31 (B) at the time of the death of the parent is keeping house for  
 32 and living with ~~such the~~ parent; and

33 (C) is not otherwise gainfully employed.

34 (b) As used in this section, the term "child" includes stepchildren,  
 35 legally adopted children, posthumous children, and acknowledged  
 36 children born out of wedlock. The term "parent" includes stepparents  
 37 and parents by adoption.

38 (c) The dependency of a child under subsections (a)(3) and (a)(4)  
 39 shall terminate when the child attains the age of twenty-one (21).

40 (d) The dependency of any person as a presumptive dependent shall  
 41 terminate upon the marriage of ~~such the~~ dependent subsequent to the  
 42 death of the employee, and ~~such the~~ dependency shall not be reinstated

C  
o  
p  
y



by divorce. However, for deaths from injuries occurring on and after July 1, 1977, a surviving spouse who is a presumptive dependent and who is the only surviving dependent of the deceased is entitled to receive, upon remarriage before the expiration of the maximum statutory compensation period, a lump sum settlement equal to the smaller of one hundred four (104) weeks of compensation or the compensation for the remainder of the maximum statutory period.

(e) The dependency of any child under subsection ~~(a)(6)~~ **(a)(5)** shall be terminated at such time as such **when the** dependent becomes gainfully employed or marries.

SECTION 22. IC 22-3-7-16, AS AMENDED BY P.L.1-2001, SECTION 28, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16. (a) Compensation shall be allowed on account of disablement from occupational disease resulting in only temporary total disability to work or temporary partial disability to work beginning with:

**(1) the eighth day of such the disability, for disablements occurring before July 1, 2004; and**

**(2) the third day of the disability, for disablements occurring after June 30, 2004;**

except for the medical benefits provided for in section 17 of this chapter. **For disablements occurring before July 1, 2004,** compensation shall be allowed for the first seven (7) calendar days only as provided in this section: **if the disability continues for at least twenty-one (21) days. For disablements occurring after June 30, 2004, compensation is allowed for the first three (3) calendar days only if the disability continues for at least fourteen (14) days.** The first weekly installment of compensation for temporary disability is due fourteen (14) days after the disability begins. Not later than fifteen (15) days from the date that the first installment of compensation is due, the employer or the employer's insurance carrier shall tender to the employee or to the employee's dependents, with all compensation due, a properly prepared compensation agreement in a form prescribed by the board. Whenever an employer or the employer's insurance carrier denies or is not able to determine liability to pay compensation or benefits, the employer or the employer's insurance carrier shall notify the worker's compensation board and the employee in writing on a form prescribed by the worker's compensation board not later than thirty (30) days after the employer's knowledge of the claimed disablement. If a determination of liability cannot be made within thirty (30) days, the worker's compensation board may approve an additional thirty (30) days upon a written request of the employer or the employer's insurance

C  
o  
p  
y



1 carrier that sets forth the reasons that the determination could not be  
 2 made within thirty (30) days and states the facts or circumstances that  
 3 are necessary to determine liability within the additional thirty (30)  
 4 days. More than thirty (30) days of additional time may be approved by  
 5 the worker's compensation board upon the filing of a petition by the  
 6 employer or the employer's insurance carrier that sets forth:

- 7 (1) the extraordinary circumstances that have precluded a
- 8 determination of liability within the initial sixty (60) days;
- 9 (2) the status of the investigation on the date the petition is filed;
- 10 (3) the facts or circumstances that are necessary to make a
- 11 determination; and
- 12 (4) a timetable for the completion of the remaining investigation.

13 An employer who fails to comply with this section is subject to a civil  
 14 penalty of fifty dollars (\$50), to be assessed and collected by the board  
 15 upon notice and hearing. Civil penalties collected under this section  
 16 shall be deposited in the state general fund.

17 (b) Once begun, temporary total disability benefits may not be  
 18 terminated by the employer unless:

- 19 (1) the employee has returned to work;
- 20 (2) the employee has died;
- 21 (3) the employee has refused to undergo a medical examination
- 22 under section 20 of this chapter;
- 23 (4) the employee has received five hundred (500) weeks of
- 24 temporary total disability benefits or has been paid the maximum
- 25 compensation allowable under section 19 of this chapter, **for**
- 26 **disablements occurring before July 1, 2004;** or
- 27 (5) the employee is unable or unavailable to work for reasons
- 28 unrelated to the compensable disease.

29 In all other cases the employer must notify the employee in writing of  
 30 the employer's intent to terminate the payment of temporary total  
 31 disability benefits, and of the availability of employment, if any, on a  
 32 form approved by the board. If the employee disagrees with the  
 33 proposed termination, the employee must give written notice of  
 34 disagreement to the board and the employer within seven (7) days after  
 35 receipt of the notice of intent to terminate benefits. If the board and  
 36 employer do not receive a notice of disagreement under this section,  
 37 the employee's temporary total disability benefits shall be terminated.  
 38 Upon receipt of the notice of disagreement, the board shall immediately  
 39 contact the parties, which may be by telephone or other means and  
 40 attempt to resolve the disagreement. If the board is unable to resolve  
 41 the disagreement within ten (10) days of receipt of the notice of  
 42 disagreement, the board shall immediately arrange for an evaluation of

C  
o  
p  
y



the employee by an independent medical examiner. The independent medical examiner shall be selected by mutual agreement of the parties or, if the parties are unable to agree, appointed by the board under IC 22-3-4-11. If the independent medical examiner determines that the employee is no longer temporarily disabled or is still temporarily disabled but can return to employment that the employer has made available to the employee, or if the employee fails or refuses to appear for examination by the independent medical examiner, temporary total disability benefits may be terminated. If either party disagrees with the opinion of the independent medical examiner, the party shall apply to the board for a hearing under section 27 of this chapter.

(c) An employer is not required to continue the payment of temporary total disability benefits for more than fourteen (14) days after the employer's proposed termination date unless the independent medical examiner determines that the employee is temporarily disabled and unable to return to any employment that the employer has made available to the employee.

(d) If it is determined that as a result of this section temporary total disability benefits were overpaid, the overpayment shall be deducted from any benefits due the employee under this section and, if there are no benefits due the employee or the benefits due the employee do not equal the amount of the overpayment, the employee shall be responsible for paying any overpayment which cannot be deducted from benefits due the employee.

(e) For disablements occurring on and after April 1, 1951, and prior to July 1, 1971, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty percent (60%) of the employee's average weekly wages for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.

For disablements occurring on and after July 1, 1971, and prior to July 1, 1974, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty percent (60%) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days.

For disablements occurring on and after July 1, 1974, and before

C  
o  
p  
y



July 1, 1976, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during such temporary total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, up to one hundred thirty-five dollars (\$135) average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

(e) For disablements occurring on and after July 1, 1976, and before July 1, 2004, from occupational disease resulting in temporary total disability for any work there shall be paid to the disabled employee during the temporary total disability weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, as defined in section 19 of this chapter, for a period not to exceed five hundred (500) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days.

(f) For disablements occurring after June 30, 2004, causing temporary total disability or total permanent disability, there shall be paid to the disabled employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the employee's average weekly wages, as defined in section 19 of this chapter, and subject to the minimum and maximum payments described in subsections (g) and (h) for a period described in section 19 of this chapter. Compensation is allowed for the first three (3) calendar days only if the disability continues for at least fourteen (14) calendar days.

(g) The minimum weekly payment for temporary total disability or total permanent disability determined under subsection (f) is the lesser of:

- (1) the amount calculated in subsection (f); or
- (2) the following amounts:
  - (A) One hundred dollars and ninety cents (\$100.90) per week for a single employee.
  - (B) One hundred five dollars and fifty cents (\$105.50) per week for a married employee without children.
  - (C) One hundred eight dollars and thirty cents (\$108.30) per week for an employee with one (1) child.
  - (D) One hundred thirteen dollars and forty cents (\$113.40) per week for an employee with two (2) children.
  - (E) One hundred seventeen dollars and forty cents

C  
o  
p  
y



(F) One hundred twenty-four dollars and thirty cents (\$124.30) per week for an employee with more than three (3) children.

(h) The maximum weekly payment for temporary total disability or total permanent disability determined under subsection (f) is one hundred thirty-three and one-third percent (133 1/3%) of the state average weekly wage as defined in section 19 of this chapter.

(i) A disabled employee receiving compensation for total permanent disability determined under subsection (f) is entitled to an annual adjustment to the weekly compensation rate paid as supplemental compensation from the rate adjustment fund established by IC 22-3-4-15 and determined as follows:

(1) The adjustment to the weekly compensation rate begins on July 1 of the second year after the award or settlement and is made on July 1 each year thereafter.

(2) The adjustment to the weekly compensation rate is payable for a year, if, in the period between:

(A) the date of:

(i) the entry of the award or settlement; or

(ii) the last annual adjustment to the weekly compensation rate; and

(B) July 1 of that year;

there has been an increase in the state average weekly wage as defined by section 19 of this chapter. The weekly compensation rate shall be increased by the same percentage as the percentage of increase in the state average weekly wage for the period.

(3) The weekly compensation after an adjustment under this subsection may not exceed the maximum weekly compensation determined under subsection (h).

(4) The amount of the adjustment determined under this subsection is payable in the same manner as the weekly payment for total permanent disability.

(5) If, in the period described in subdivision (2), the state average weekly wage has not increased or has decreased, the weekly compensation rate does not change.

(f) For disablements occurring on and after April 1, 1951, and prior to July 1, 1971, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty percent

C  
o  
p  
y



(60%) of the difference between the employee's average weekly wages and the weekly wages at which the employee is actually employed after the disablement; for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days. In case of partial disability after the period of temporary total disability, the latter period shall be included as part of the maximum period allowed for partial disability.

For disablements occurring on and after July 1, 1971, and prior to July 1, 1974, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during such disability a weekly compensation equal to sixty percent (60%) of the difference between the employee's average weekly wages, as defined in section 19 of this chapter, and the weekly wages at which the employee is actually employed after the disablement; for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-eight (28) days. In case of partial disability after the period of temporary total disability, the latter period shall be included as a part of the maximum period allowed for partial disability.

(j) For disablements occurring on and after July 1, 1974, **and before July 1, 2004**, from occupational disease resulting in temporary partial disability for work there shall be paid to the disabled employee during ~~such~~ **the** disability a weekly compensation equal to sixty-six and two-thirds percent (66 2/3%) of the difference between the employee's average weekly wages, as defined in section 19 of this chapter, and the weekly wages at which ~~he~~ **the employee** is actually employed after the disablement, for a period not to exceed three hundred (300) weeks. Compensation shall be allowed for the first seven (7) calendar days only if the disability continues for longer than twenty-one (21) days. In case of partial disability after the period of temporary total disability, the latter period shall be included as a part of the maximum period allowed for partial disability.

(k) For disablements occurring after June 30, 2004, from occupational disease resulting in temporary partial disability for work, the weekly compensation paid to the disabled employee during the disability is equal to sixty-six and two-thirds percent (66 2/3%) of the difference between the employee's average weekly wages as defined in section 19 of this chapter and the weekly wages at which the employee is actually employed after the disablement, for the period of the disability. Compensation is allowed for the first three (3) calendar days only if the disability continues for at

C  
o  
p  
y





1 least fourteen (14) calendar days.

2 (g) For disabilities occurring on and after April 1, 1951, and prior  
3 to April 1, 1955, from occupational disease in the following schedule;  
4 the employee shall receive in lieu of all other compensation, on account  
5 of such disabilities, a weekly compensation of sixty percent (60%) of  
6 the employee's average weekly wage; for disabilities occurring on and  
7 after April 1, 1955, and prior to July 1, 1971, from occupational disease  
8 in the following schedule; the employee shall receive in addition to  
9 disability benefits not exceeding twenty-six (26) weeks on account of  
10 said occupational disease a weekly compensation of sixty percent  
11 (60%) of the employee's average weekly wages.

12 For disabilities occurring on and after July 1, 1971, and before July  
13 1, 1977, from occupational disease in the following schedule; the  
14 employee shall receive in addition to disability benefits not exceeding  
15 twenty-six (26) weeks on account of said occupational disease a weekly  
16 compensation of sixty percent (60%) of his average weekly wages not  
17 to exceed one hundred dollars (\$100) average weekly wages; for the  
18 period stated for such disabilities respectively.

19 For disabilities occurring on and after July 1, 1977, and before July  
20 1, 1979, from occupational disease in the following schedule; the  
21 employee shall receive in addition to disability benefits not exceeding  
22 twenty-six (26) weeks on account of the occupational disease a weekly  
23 compensation of sixty percent (60%) of the employee's average weekly  
24 wages; not to exceed one hundred twenty-five dollars (\$125) average  
25 weekly wages; for the period stated for the disabilities.

26 (l) For disabilities occurring on and after July 1, 1979, and before  
27 July 1, 1988, from occupational disease in the following schedule, the  
28 employee shall receive in addition to disability benefits, not exceeding  
29 fifty-two (52) weeks on account of the occupational disease, a weekly  
30 compensation of sixty percent (60%) of the employee's average weekly  
31 wages, not to exceed one hundred twenty-five dollars (\$125) average  
32 weekly wages, for the period stated for the disabilities.

33 (m) For disabilities occurring on and after July 1, 1988, and before  
34 July 1, 1989, from occupational disease in the following schedule, the  
35 employee shall receive in addition to disability benefits, not exceeding  
36 seventy-eight (78) weeks on account of the occupational disease, a  
37 weekly compensation of sixty percent (60%) of the employee's average  
38 weekly wages, not to exceed one hundred sixty-six dollars (\$166)  
39 average weekly wages, for the period stated for the disabilities.

40 (n) For disabilities occurring on and after July 1, 1989, and before  
41 July 1, 1990, from occupational disease in the following schedule, the  
42 employee shall receive in addition to disability benefits, not exceeding

C  
o  
p  
y



seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed one hundred eighty-three dollars (\$183) average weekly wages, for the period stated for the disabilities.

(o) For disabilities occurring on and after July 1, 1990, and before July 1, 1991, from occupational disease in the following schedule, the employee shall receive in addition to disability benefits, not exceeding seventy-eight (78) weeks on account of the occupational disease, a weekly compensation of sixty percent (60%) of the employee's average weekly wages, not to exceed two hundred dollars (\$200) average weekly wages, for the period stated for the disabilities.

(1) Amputations: For the loss by separation, of the thumb, sixty (60) weeks; of the index finger, forty (40) weeks; of the second finger, thirty-five (35) weeks; of the third or ring finger, thirty (30) weeks; of the fourth or little finger, twenty (20) weeks; of the hand by separation below the elbow, two hundred (200) weeks; of the arm above the elbow joint, two hundred fifty (250) weeks; of the big toe, sixty (60) weeks; of the second toe, thirty (30) weeks; of the third toe, twenty (20) weeks; of the fourth toe, fifteen (15) weeks; of the fifth or little toe, ten (10) weeks; of the foot below the knee joint, one hundred fifty (150) weeks; and of the leg above the knee joint, two hundred (200) weeks. The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the thumb or toe and compensation shall be paid for one-half (1/2) of the period for the loss of the entire thumb or toe. The loss of not more than two (2) phalanges of a finger shall be considered as the loss of one-half (1/2) the finger and compensation shall be paid for one-half (1/2) of the period for the loss of the entire finger.

(2) Loss of Use: The total permanent loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange and the compensation shall be paid for the same period as for the loss thereof by separation.

(3) Partial Loss of Use: For the permanent partial loss of the use of an arm, hand, thumb, finger, leg, foot, toe, or phalange, compensation shall be paid for the proportionate loss of the use of such arm, hand, thumb, finger, leg, foot, toe, or phalange.

C  
o  
p  
y



(4) For disablements for occupational disease resulting in total permanent disability, five hundred (500) weeks.

(5) For the loss of both hands, or both feet, or the total sight of both eyes, or any two (2) of such losses resulting from the same disablement by occupational disease, five hundred (500) weeks.

(6) For the permanent and complete loss of vision by enucleation of an eye or its reduction to one-tenth (1/10) of normal vision with glasses, one hundred fifty (150) weeks, and for any other permanent reduction of the sight of an eye, compensation shall be paid for a period proportionate to the degree of such permanent reduction without correction or glasses. However, when such permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, but correction or glasses would result in restoration of vision, then compensation shall be paid for fifty percent (50%) of such total loss of vision without glasses plus an additional amount equal to the proportionate amount of such reduction with glasses, not to exceed an additional fifty percent (50%).

(7) For the permanent and complete loss of hearing, two hundred (200) weeks.

(8) In all other cases of permanent partial impairment, compensation proportionate to the degree of such permanent partial impairment, in the discretion of the worker's compensation board, not exceeding five hundred (500) weeks.

(9) In all cases of permanent disfigurement, which may impair the future usefulness or opportunities of the employee, compensation in the discretion of the worker's compensation board, not exceeding two hundred (200) weeks, except that no compensation shall be payable under this paragraph where compensation shall be payable under subdivisions (1) through (8). Where compensation for temporary total disability has been paid, this amount of compensation shall be deducted from any compensation due for permanent disfigurement.

(p) With respect to disablements in the following schedule occurring on and after July 1, 1991, **and before July 1, 2004**, the employee shall receive in addition to temporary total disability benefits, not exceeding one hundred twenty-five (125) weeks on account of the disablement, compensation in an amount determined under the following schedule to be paid weekly at a rate of sixty-six and two-thirds percent ( $66 \frac{2}{3}\%$ ) of the employee's average weekly wages during the fifty-two (52) weeks immediately preceding the week in which the disablement occurred:

C  
o  
p  
y



(1) Amputation: For the loss by separation of the thumb, twelve (12) degrees of permanent impairment; of the index finger, eight (8) degrees of permanent impairment; of the second finger, seven (7) degrees of permanent impairment; of the third or ring finger, six (6) degrees of permanent impairment; of the fourth or little finger, four (4) degrees of permanent impairment; of the hand by separation below the elbow joint, forty (40) degrees of permanent impairment; of the arm above the elbow, fifty (50) degrees of permanent impairment; of the big toe, twelve (12) degrees of permanent impairment; of the second toe, six (6) degrees of permanent impairment; of the third toe, four (4) degrees of permanent impairment; of the fourth toe, three (3) degrees of permanent impairment; of the fifth or little toe, two (2) degrees of permanent impairment; of separation of the foot below the knee joint, thirty-five (35) degrees of permanent impairment; and of the leg above the knee joint, forty-five (45) degrees of permanent impairment.

(2) Amputations occurring on or after July 1, 1997: For the loss by separation of any of the body parts described in subdivision (1) on or after July 1, 1997, the dollar values per degree applying on the date of the injury as described in subsection (h) shall be multiplied by two (2). However, the doubling provision of this subdivision does not apply to a loss of use that is not a loss by separation.

(3) The loss of more than one (1) phalange of a thumb or toe shall be considered as the loss of the entire thumb or toe. The loss of more than two (2) phalanges of a finger shall be considered as the loss of the entire finger. The loss of not more than one (1) phalange of a thumb or toe shall be considered as the loss of one-half (1/2) of the degrees of permanent impairment for the loss of the entire thumb or toe. The loss of not more than one (1) phalange of a finger shall be considered as the loss of one-third (1/3) of the finger and compensation shall be paid for one-third (1/3) of the degrees payable for the loss of the entire finger. The loss of more than one (1) phalange of the finger but not more than two (2) phalanges of the finger shall be considered as the loss of one-half (1/2) of the finger and compensation shall be paid for one-half (1/2) of the degrees payable for the loss of the entire finger.

(4) For the loss by separation of both hands or both feet or the total sight of both eyes or any two (2) such losses in the same accident, one hundred (100) degrees of permanent impairment.

**C**  
**O**  
**P**  
**Y**



(5) For the permanent and complete loss of vision by enucleation or its reduction to one-tenth (1/10) of normal vision with glasses, thirty-five (35) degrees of permanent impairment.

(6) For the permanent and complete loss of hearing in one (1) ear, fifteen (15) degrees of permanent impairment, and in both ears, forty (40) degrees of permanent impairment.

(7) For the loss of one (1) testicle, ten (10) degrees of permanent impairment; for the loss of both testicles, thirty (30) degrees of permanent impairment.

(8) Loss of use: The total permanent loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange shall be considered as the equivalent of the loss by separation of the arm, hand, thumb, finger, leg, foot, toe, or phalange, and compensation shall be paid in the same amount as for the loss by separation. However, the doubling provision of subdivision (2) does not apply to a loss of use that is not a loss by separation.

(9) Partial loss of use: For the permanent partial loss of the use of an arm, a hand, a thumb, a finger, a leg, a foot, a toe, or a phalange, compensation shall be paid for the proportionate loss of the use of the arm, hand, thumb, finger, leg, foot, toe, or phalange.

(10) For disablements resulting in total permanent disability, the amount payable for impairment or five hundred (500) weeks of compensation, whichever is greater.

(11) For any permanent reduction of the sight of an eye less than a total loss as specified in subdivision (5), the compensation shall be paid in an amount proportionate to the degree of a permanent reduction without correction or glasses. However, when a permanent reduction without correction or glasses would result in one hundred percent (100%) loss of vision, then compensation shall be paid for fifty percent (50%) of the total loss of vision without glasses, plus an additional amount equal to the proportionate amount of the reduction with glasses, not to exceed an additional fifty percent (50%).

(12) For any permanent reduction of the hearing of one (1) or both ears, less than the total loss as specified in subdivision (6), compensation shall be paid in an amount proportionate to the degree of a permanent reduction.

(13) In all other cases of permanent partial impairment, compensation proportionate to the degree of a permanent partial impairment, in the discretion of the worker's compensation board, not exceeding one hundred (100) degrees of permanent impairment.

C  
o  
p  
y



(14) In all cases of permanent disfigurement which may impair the future usefulness or opportunities of the employee, compensation, in the discretion of the worker's compensation board, not exceeding forty (40) degrees of permanent impairment except that no compensation shall be payable under this subdivision where compensation is payable elsewhere in this section.

~~(h)~~ (q) With respect to disablements occurring on and after July 1, 1991, **and before July 1, 2004**, compensation for permanent partial impairment shall be paid according to the degree of permanent impairment for the disablement determined under subsection ~~(d)~~ (p) and the following:

(1) With respect to disablements occurring on and after July 1, 1991, and before July 1, 1992, for each degree of permanent impairment from one (1) to thirty-five (35), five hundred dollars (\$500) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), nine hundred dollars (\$900) per degree; for each degree of permanent impairment above fifty (50), one thousand five hundred dollars (\$1,500) per degree.

(2) With respect to disablements occurring on and after July 1, 1992, and before July 1, 1993, for each degree of permanent impairment from one (1) to twenty (20), five hundred dollars (\$500) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), eight hundred dollars (\$800) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand three hundred dollars (\$1,300) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(3) With respect to disablements occurring on and after July 1, 1993, and before July 1, 1997, for each degree of permanent impairment from one (1) to ten (10), five hundred dollars (\$500) per degree; for each degree of permanent impairment from eleven (11) to twenty (20), seven hundred dollars (\$700) per degree; for each degree of permanent impairment from twenty-one (21) to thirty-five (35), one thousand dollars (\$1,000) per degree; for each degree of permanent impairment from thirty-six (36) to fifty (50), one thousand four hundred dollars (\$1,400) per degree; for each degree of permanent impairment above fifty (50), one thousand seven hundred dollars (\$1,700) per degree.

(4) With respect to disablements occurring on and after July 1, 1997, and before July 1, 1998, for each degree of permanent

C  
o  
p  
y



1 impairment from one (1) to ten (10), seven hundred fifty dollars  
 2 (\$750) per degree; for each degree of permanent impairment from  
 3 eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per  
 4 degree; for each degree of permanent impairment from thirty-six  
 5 (36) to fifty (50), one thousand four hundred dollars (\$1,400) per  
 6 degree; for each degree of permanent impairment above fifty (50),  
 7 one thousand seven hundred dollars (\$1,700) per degree.

8 (5) With respect to disablements occurring on and after July 1,  
 9 1998, and before July 1, 1999, for each degree of permanent  
 10 impairment from one (1) to ten (10), seven hundred fifty dollars  
 11 (\$750) per degree; for each degree of permanent impairment from  
 12 eleven (11) to thirty-five (35), one thousand dollars (\$1,000) per  
 13 degree; for each degree of permanent impairment from thirty-six  
 14 (36) to fifty (50), one thousand four hundred dollars (\$1,400) per  
 15 degree; for each degree of permanent impairment above fifty (50),  
 16 one thousand seven hundred dollars (\$1,700) per degree.

17 (6) With respect to disablements occurring on and after July 1,  
 18 1999, and before July 1, 2000, for each degree of permanent  
 19 impairment from one (1) to ten (10), nine hundred dollars (\$900)  
 20 per degree; for each degree of permanent impairment from eleven  
 21 (11) to thirty-five (35), one thousand one hundred dollars  
 22 (\$1,100) per degree; for each degree of permanent impairment  
 23 from thirty-six (36) to fifty (50), one thousand six hundred dollars  
 24 (\$1,600) per degree; for each degree of permanent impairment  
 25 above fifty (50), two thousand dollars (\$2,000) per degree.

26 (7) With respect to disablements occurring on and after July 1,  
 27 2000, and before July 1, 2001, for each degree of permanent  
 28 impairment from one (1) to ten (10), one thousand one hundred  
 29 dollars (\$1,100) per degree; for each degree of permanent  
 30 impairment from eleven (11) to thirty-five (35), one thousand  
 31 three hundred dollars (\$1,300) per degree; for each degree of  
 32 permanent impairment from thirty-six (36) to fifty (50), two  
 33 thousand dollars (\$2,000) per degree; for each degree of  
 34 permanent impairment above fifty (50), two thousand five  
 35 hundred fifty dollars (\$2,500) per degree.

36 (8) With respect to disablements occurring on and after July 1,  
 37 2001, **and before July 1, 2004**, for each degree of permanent  
 38 impairment from one (1) to ten (10), one thousand three hundred  
 39 dollars (\$1,300) per degree; for each degree of permanent  
 40 impairment from eleven (11) to thirty-five (35), one thousand five  
 41 hundred dollars (\$1,500) per degree; for each degree of  
 42 permanent impairment from thirty-six (36) to fifty (50), two

C  
o  
p  
y



thousand four hundred dollars (\$2,400) per degree; for each degree of permanent impairment above fifty (50), three thousand dollars (\$3,000) per degree.

**(r) For disablements occurring after June 30, 2004, compensation for permanent partial impairment is determined under section 16.3 of this chapter.**

~~(i)~~ **(s)** The average weekly wages used in the determination of compensation for permanent partial impairment under subsections ~~(g)~~ **(p)** and ~~(h)~~ **(q)** shall not exceed the following:

(1) With respect to disablements occurring on or after July 1, 1991, and before July 1, 1992, four hundred ninety-two dollars (\$492).

(2) With respect to disablements occurring on or after July 1, 1992, and before July 1, 1993, five hundred forty dollars (\$540).

(3) With respect to disablements occurring on or after July 1, 1993, and before July 1, 1994, five hundred ninety-one dollars (\$591).

(4) With respect to disablements occurring on or after July 1, 1994, and before July 1, 1997, six hundred forty-two dollars (\$642).

(5) With respect to disablements occurring on or after July 1, 1997, and before July 1, 1998, six hundred seventy-two dollars (\$672).

(6) With respect to disablements occurring on or after July 1, 1998, and before July 1, 1999, seven hundred two dollars (\$702).

(7) With respect to disablements occurring on or after July 1, 1999, and before July 1, 2000, seven hundred thirty-two dollars (\$732).

(8) With respect to disablements occurring on or after July 1, 2000, and before July 1, 2001, seven hundred sixty-two dollars (\$762).

(9) With respect to injuries occurring on or after July 1, 2001, and before July 1, 2002, eight hundred twenty-two dollars (\$822).

(10) With respect to injuries occurring on or after July 1, 2002, **and before July 1, 2004**, eight hundred eighty-two dollars (\$882).

~~(i)~~ **(t)** If any employee, only partially disabled, refuses employment suitable to ~~his~~ **the employee's** capacity procured for ~~him~~, ~~he~~ **the employee, the employee** shall not be entitled to any compensation at any time during the continuance of ~~such~~ **the** refusal unless, in the opinion of the worker's compensation board, ~~such~~ **the** refusal was justifiable. The employee must be served with a notice setting forth the

C  
o  
p  
y





consequences of the refusal under this subsection. The notice must be in a form prescribed by the worker's compensation board.

~~(k)~~ **(u)** If an employee has sustained a permanent impairment or disability from an accidental injury other than an occupational disease in another employment than that in which ~~he~~ **the employee** suffered a subsequent disability from an occupational disease, such as herein specified, the employee shall be entitled to compensation for the subsequent disability in the same amount as if the previous impairment or disability had not occurred. However, if the permanent impairment or disability resulting from an occupational disease for which compensation is claimed results only in the aggravation or increase of a previously sustained permanent impairment from an occupational disease or physical condition regardless of the source or cause of such previously sustained impairment from an occupational disease or physical condition, the board shall determine the extent of the previously sustained permanent impairment from an occupational disease or physical condition as well as the extent of the aggravation or increase resulting from the subsequent permanent impairment or disability, and shall award compensation only for that part of ~~said~~ **the** occupational disease or physical condition resulting from the subsequent permanent impairment. An amputation of any part of the body or loss of any or all of the vision of one (1) or both eyes caused by an occupational disease shall be considered as a permanent impairment or physical condition.

~~(t)~~ **(v)** If an employee suffers a disablement from occupational disease for which compensation is payable while the employee is still receiving or entitled to compensation for a previous injury by accident or disability by occupational disease in the same employment, ~~he~~ **the employee** shall not at the same time be entitled to compensation for both, unless it be for a permanent injury, such as specified in subsection ~~(g)(1), (g)(4), (g)(5), (g)(8), or (g)(9); (p)(1), (p)(4), (p)(5), (p)(8), or (p)(9), for disablements resulting from an occupational disease occurring before July 1, 2004;~~ but the employee shall be entitled to compensation for that disability and from the time of that disability which will cover the longest period and the largest amount payable under this chapter. **For disablements resulting from an occupational disease occurring after June, 30, 2004, permanent partial disability is paid as set forth in section 16.5 or 16.7 of this chapter.**

~~(m)~~ **(w)** If an employee receives a permanent disability from occupational disease such as specified in subsection ~~(g)(1), (g)(4), (g)(5), (g)(8), or (g)(9)~~ **(p)(1), (p)(4), (p)(5), (p)(8), or (p)(9), for**

C  
o  
p  
y



1     **disablements resulting from an occupational disease occurring**  
 2     **before July 1, 2004**, after having sustained another such permanent  
 3     disability in the same employment the employee shall be entitled to  
 4     compensation for both such disabilities, but the total compensation  
 5     shall be paid by extending the period and not by increasing the amount  
 6     of weekly compensation and, when such previous and subsequent  
 7     permanent disabilities, in combination result in total permanent  
 8     disability or permanent total impairment, compensation shall be  
 9     payable for such permanent total disability or impairment, but  
 10    payments made for the previous disability or impairment shall be  
 11    deducted from the total payment of compensation due. **For**  
 12    **disablements resulting from an occupational disease occurring**  
 13    **after June 30, 2004, permanent total disability is paid as set forth**  
 14    **in subsection (f).**

15       (n) When an employee has been awarded or is entitled to an award  
 16    of compensation for a definite period under this chapter for disability  
 17    from occupational disease; which disablement occurs on and after April  
 18    1, 1951, and prior to April 1, 1963; and such employee dies from any  
 19    other cause than such occupational disease; payment of the unpaid  
 20    balance of such compensation; not exceeding three hundred (300)  
 21    weeks; shall be made to the employee's dependents of the second and  
 22    third class as defined in sections 11 through 14 of this chapter; and  
 23    compensation; not exceeding five hundred (500) weeks; shall be made  
 24    to the employee's dependents of the first class as defined in sections 11  
 25    through 14 of this chapter. (x) When an employee has been awarded or  
 26    is entitled to an award of compensation for a definite period from an  
 27    occupational disease wherein disablement occurs on and after April 1,  
 28    1963, **and before July 1, 2004**, and such employee dies from other  
 29    causes than such occupational disease, payment of the unpaid balance  
 30    of such compensation not exceeding three hundred fifty (350) weeks  
 31    shall be paid to the employee's dependents of the second and third class  
 32    as defined in sections 11 through 14 of this chapter and compensation,  
 33    not exceeding five hundred (500) weeks shall be made to the  
 34    employee's dependents of the first class as defined in sections 11  
 35    through 14 of this chapter.

36       (y) **For disablements resulting from occupational disease**  
 37    **occurring after June 30, 2004, the total compensation paid under**  
 38    **section 11 of this chapter is limited to the greater of:**

39           (1) twenty (20) years of weekly benefits; or

40           (2) two hundred fifty thousand dollars (\$250,000).

41       (z) **The total compensation paid under subsection (y) is reduced**  
 42    **by the amount of the compensation paid to the employee before the**

C  
o  
p  
y



**employee's death.**

(aa) Any payment made by the employer to the employee during the period of the employee's disability, or to the employee's dependents, which, by the terms of this chapter, was not due and payable when made, may, subject to the approval of the worker's compensation board, be deducted from the amount to be paid as compensation, but such deduction shall be made from the distal end of the period during which compensation must be paid, except in cases of temporary disability.

(bb) When so provided in the compensation agreement or in the award of the worker's compensation board, compensation may be paid semimonthly, or monthly, instead of weekly.

(cc) When the aggregate payments of compensation awarded by agreement or upon hearing to an employee or dependent under eighteen (18) years of age do not exceed one hundred dollars (\$100), the payment thereof may be made directly to such employee or dependent, except when the worker's compensation board shall order otherwise.

(dd) Whenever the aggregate payments of compensation, due to any person under eighteen (18) years of age, exceed one hundred dollars (\$100), the payment thereof shall be made to a trustee, appointed by the circuit or superior court, or to a duly qualified guardian, or, upon the order of the worker's compensation board, to a parent or to such minor person. The payment of compensation, due to any person eighteen (18) years of age or over, may be made directly to such person.

(ee) If an employee, or a dependent, is mentally incompetent, or a minor at the time when any right or privilege accrues to the employee under this chapter, the employee's guardian or trustee may, in the employee's behalf, claim and exercise such right and privilege.

(ff) All compensation payments named and provided for in this section, shall mean and be defined to be for only such occupational diseases and disabilities therefrom as are proved by competent evidence, of which there are or have been objective conditions or symptoms proven, not within the physical or mental control of the employee. ~~himself~~:

SECTION 23. IC 22-3-7-16.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: **Sec. 16.3. (a) For disablements occurring after June, 30, 2004, that result in permanent partial impairment, the employee shall receive:**

**(1) temporary total disability benefits determined under section 16(f) of this chapter; and**

**(2) additional compensation for:**

**(A) the loss of a part of the body;**

C  
o  
p  
y



(B) the permanent and complete loss of use of a part of the body; or

(C) the partial loss of use of the body as a whole; in an amount determined under this section.

(b) The additional compensation paid under this section is sixty percent (60%) of the employee's average weekly wages, determined under section 19 of this chapter, paid weekly for the number of weeks:

(1) listed in section 16.5 of this chapter for the employee's injury; or

(2) determined by the alternative method set forth under section 16.7 of this chapter.

(c) The minimum weekly payment for permanent partial disability under this section is the lesser of:

(1) the amount calculated in subsection (b); or

(2) the following amounts:

(A) Eighty dollars and ninety cents (\$80.90) per week for a single employee.

(B) Eighty-three dollars and twenty cents (\$83.20) per week for a married employee without children.

(C) Eighty-six dollars and ten cents (\$86.10) per week for an employee with one (1) child.

(D) Eighty-eight dollars and ninety cents (\$88.90) per week for an employee with two (2) children.

(E) Ninety-one dollars and eighty cents (\$91.80) per week for an employee with three (3) children.

(F) Ninety-six dollars and ninety cents (\$96.90) per week for an employee with more than three (3) children.

(d) The maximum weekly payment for permanent partial disability under this section is one hundred thirty-three and one-third percent (133 1/3%) of the state average weekly wage as defined in section 19 of this chapter.

(e) The worker's compensation board shall determine the amount of compensation paid for permanent partial disability under this section, section 16.5, and section 16.7 based on an evaluation of the employee's physical impairment and the effect of that impairment of the employee's life.

SECTION 24. IC 22-3-7-16.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 16.5. (a) For disablements occurring after June 30, 2004, the schedules in this section apply to the determination of the additional compensation payable under

C  
o  
p  
y



section 16.3 of this chapter.

(b) The following amounts apply either to the loss of or to the permanent and complete loss of use of the following parts of the body:

- (1) Thumb: Seventy (70) weeks.
- (2) First, or index, finger: Forty (40) weeks.
- (3) Second, or middle, finger: Thirty-five (35) weeks.
- (4) Third, or ring, finger: Twenty-five (25) weeks.
- (5) Fourth, or little, finger: Twenty (20) weeks.
- (6) Great toe: Thirty-five (35) weeks.
- (7) Each toe other than the great toe: Twelve (12) weeks.
- (8) Hand: One hundred ninety (190) weeks.
- (9) Arm: Two hundred thirty-five (235) weeks.
- (10) Foot: One hundred fifty-five (155) weeks.
- (11) Leg: Two hundred (200) weeks.
- (12) Loss of one (1) eye, loss of sight: One hundred fifty (150) weeks.
- (13) Loss of one (1) eye, removal: One hundred sixty (160) weeks.
- (14) Loss of hearing in one ear: Fifty (50) weeks.
- (15) Loss of hearing in both ears: Two hundred (200) weeks.
- (16) One testicle: Fifty (50) weeks.
- (17) Both testicles: One hundred fifty (150) weeks.

(c) The compensation of at least the listed amounts applies to the following fractures that result in permanent disability:

- (1) A skull fracture: Six (6) weeks.
- (2) A vertebral fracture: Six (6) weeks.
- (3) A fracture of any of the following facial bones: Two (2) weeks for each bone:
  - (A) Nasal.
  - (B) Lachrymal.
  - (C) Vomer.
  - (D) Zygoma.
  - (E) Maxilla.
  - (F) Palatine.
  - (G) Mandible.
- (4) A fracture of a transverse process: Three (3) weeks.

(d) The amount of compensation allowed when a disablement results in the loss of a kidney, spleen, or lung: At least ten (10) weeks per organ.

(e) The loss of the first or distal phalanx of the thumb, any finger, or any toe is considered to be equal to the loss of fifty

C  
o  
p  
y



percent (50%) of the thumb, finger, or toe. The compensation for the loss is fifty percent (50%) of the amounts specified in subsection (b).

(f) The loss of more than one (1) phalanx of the thumb, any finger, or any toe is considered to be the loss of the entire thumb, finger, or toe.

(g) The amount received for the loss of more than one (1) finger may not exceed the amount received under this section for the loss of a hand.

(h) The loss of more than one (1) digit or more than one (1) phalange on more than one (1) digit of a hand is compensated on the basis of the partial loss of use of a hand. The loss of, or the loss of use of, four (4) digits on a hand is considered the loss of the entire hand.

(i) The compensation for the amputation of an arm below the elbow is equal to the compensation for the loss of an arm.

(j) The compensation for the amputation of an arm above the elbow is fifteen (15) weeks, except that when the amputation of the arm:

- (1) is at the shoulder joint, preventing (or is so close to the shoulder joint as to prevent) the use of an artificial arm; or
- (2) results in the disarticulation of the arm at the shoulder joint;

the compensation is sixty-five (65) weeks.

(k) The compensation for the amputation of a leg below the knee is equal to the compensation for the loss of a leg.

(l) The compensation for the amputation of a leg above the knee is twenty-five (25) weeks, except that when the amputation of the leg:

- (1) is at the hip joint, preventing (or is so close to the hip joint as to prevent) the use of an artificial leg; or
- (2) results in the disarticulation of a leg at the hip joint;

the compensation is seventy-five (75) weeks.

(m) For the permanent partial loss of use of a body part, including sight of an eye or hearing of an ear, the compensation is proportionate, based on the percentage the partial loss of use of the body part bears to the total loss of use of the body part.

(n) When an employee has sustained a loss by amputation or a partial loss by amputation of a body part listed in subsection (b) before the disablement for which the employee claims compensation under this article, the previous loss or loss of use of the body part is deducted from the compensation awarded under

C  
o  
p  
y



1 this article.

2 (o) The following constitute total and permanent disability  
3 under this chapter:

4 (1) Loss of both hands.

5 (2) Loss of both arms.

6 (3) Loss of both feet.

7 (4) Loss of both legs.

8 (5) Loss of both eyes.

9 (6) Loss of:

10 (A) one (1) body part referred to in subdivisions (1)  
11 through (5); and

12 (B) another body part referred to in subdivisions (1)  
13 through (5) of a type different from the body part referred  
14 to clause (A).

15 This list does not exclude other cases that may establish that an  
16 employee has a total and permanent disability.

17 (p) For serious and permanent disfigurement to the hand, head,  
18 face, neck, arm, leg below the knee, or the chest above the axillary  
19 line, the employee is entitled to compensation for disfigurement in  
20 an amount of not more than one hundred fifty (150) weeks of  
21 compensation determined under section 16.3 of this chapter.

22 SECTION 25. IC 22-3-7-16.7 IS ADDED TO THE INDIANA  
23 CODE AS A NEW SECTION TO READ AS FOLLOWS  
24 [EFFECTIVE JULY 1, 2004]: Sec. 16.7. (a) For disablements  
25 occurring after June 30, 2004, this section applies when an  
26 employee sustains the following:

27 (1) A permanent partial impairment not covered under the  
28 schedule set forth under section 16.5 of this chapter.

29 (2) In addition to a permanent partial impairment covered  
30 under the schedule set forth under section 16.5 of this chapter,  
31 a disablement resulting from an occupational disease that:

32 (A) does not disable the employee from performing the  
33 duties of the employee's employment; but

34 (B) does:

35 (i) disable the employee from pursuing other suitable  
36 occupations; or

37 (ii) result in physical impairment.

38 (3) A disablement resulting from an occupational disease that:

39 (A) partially disables the employee from performing the  
40 duties of the employee's usual and customary line of  
41 employment; but

42 (B) does:

C  
o  
p  
y



1 (i) not result in an impairment of earning capacity; or  
 2 (ii) result in a impairment of earning capacity, and the  
 3 employee elects to waive the employee's right to recover  
 4 under the schedule set forth under section 16.5 of this  
 5 chapter.

6 (b) The additional compensation paid under section 16.3 of this  
 7 chapter and this section is sixty percent (60%) of the employee's  
 8 average weekly wages, determined under section 19 of this chapter,  
 9 paid weekly for that percentage of five hundred (500) weeks that  
 10 the partial loss of use of the body bears to the use of the body as a  
 11 whole, subject to the minimum and maximum weekly payment  
 12 amounts set forth in subsections 16.3(c) and 16.3(d) of this chapter.

13 SECTION 26. IC 22-3-7-17, AS AMENDED BY P.L.31-2000,  
 14 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 15 JULY 1, 2004]: Sec. 17. (a) During the period of disablement, the  
 16 employer shall furnish or cause to be furnished, free of charge to the  
 17 employee, an attending physician for the treatment of ~~his~~ **the**  
 18 **employee's** occupational disease, and in addition thereto such surgical,  
 19 hospital, and nursing services and supplies as the attending physician  
 20 or the worker's compensation board may deem necessary. If the  
 21 employee is requested or required by the employer to submit to  
 22 treatment outside the county of employment, the employer shall also  
 23 pay the reasonable expense of travel, food, and lodging necessary  
 24 during the travel, but not to exceed the amount paid at the time of the  
 25 travel by the state of Indiana to its employees. If the treatment or travel  
 26 to or from the place of treatment causes a loss of working time to the  
 27 employee, the employer shall reimburse the employee for the loss of  
 28 wages using the basis of the employee's average daily wage.

29 (b) During the period of disablement resulting from the occupational  
 30 disease, the employer shall furnish such physician, services, and  
 31 supplies, and the worker's compensation board may, on proper  
 32 application of either party, require that treatment by such physician and  
 33 such services and supplies be furnished by or on behalf of the employer  
 34 as the board may deem reasonably necessary. After an employee's  
 35 occupational disease has been adjudicated by agreement or award on  
 36 the basis of permanent partial impairment and within the statutory  
 37 period for review in such case as provided in section 27(i) of this  
 38 chapter, the employer may continue to furnish a physician or a surgeon  
 39 and other medical services and supplies, and the board may, within  
 40 such statutory period for review as provided in section 27(i) of this  
 41 chapter, on a proper application of either party, require that treatment  
 42 by such physician or surgeon and such services and supplies be

C  
o  
p  
y





furnished by and on behalf of the employer as the board may deem necessary to limit or reduce the amount and extent of such impairment. The refusal of the employee to accept such services and supplies when so provided by or on behalf of the employer, shall bar the employee from all compensation otherwise payable during the period of such refusal and ~~his~~ **the employee's** right to prosecute any proceeding under this chapter shall be suspended and abated until such refusal ceases. The employee must be served with a notice setting forth the consequences of the refusal under this section. The notice must be in a form prescribed by the worker's compensation board. No compensation for permanent total impairment, permanent partial impairment, permanent disfigurement, or death shall be paid or payable for that part or portion of such impairment, disfigurement, or death which is the result of the failure of such employee to accept such treatment, services, and supplies, provided that an employer may at any time permit an employee to have treatment for ~~his~~ **the employee's** disease or injury by spiritual means or prayer in lieu of such physician, services, and supplies.

**(c) After the employee's medical treatment with an attending physician described in subsection (a) begins, neither the employer nor the employer's insurance carrier has the right to transfer or otherwise redirect an employee's medical treatment to another physician unless:**

- (1) the employee makes the transfer request;**
- (2) the attending physician requests that the physician's treatment of the employee be discontinued; or**
- (3) the worker's compensation board determines that there is good cause for the transfer.**

**(d) If the employer or the employer's insurance carrier desires to transfer or redirect the employee's medical treatment under subsection (c)(3) for good cause, the employer or the employer's insurance carrier shall file a transfer request with the worker's compensation board on forms prescribed by the board. A transfer may not occur until the worker's compensation board issues an order granting the transfer request.**

**(e) Regardless of when it occurs, where a compensable occupational disease results in the amputation of a body part, the enucleation of an eye, or the loss of natural teeth, the employer shall furnish an appropriate artificial member, braces, and prosthodontics. The cost of repairs to or replacements for the artificial members, braces, or prosthodontics that result from a compensable occupational disease pursuant to a prior award and are required due to either medical**

**C  
o  
p  
y**



necessity or normal wear and tear, determined according to the employee's individual use, but not abuse, of the artificial member, braces, or prosthodontics, shall be paid from the second injury fund upon order or award of the worker's compensation board. The employee is not required to meet any other requirement for admission to the second injury fund.

~~(d)~~ (f) If an emergency or because of the employer's failure to provide such attending physician or such surgical, hospital, or nurse's services and supplies or such treatment by spiritual means or prayer as specified in this section, or for other good reason, a physician other than that provided by the employer treats the diseased employee within the period of disability, or necessary and proper surgical, hospital, or nurse's services and supplies are procured within the period, the reasonable cost of such services and supplies shall, subject to approval of the worker's compensation board, be paid by the employer.

~~(e)~~ (g) This section may not be construed to prohibit an agreement between an employer and employees that has the approval of the board and that:

- (1) binds the parties to medical care furnished by providers selected by agreement before or after disablement; or
- (2) makes the findings of a provider chosen in this manner binding upon the parties.

~~(f)~~ (h) The employee and the employee's estate do not have liability to a health care provider for payment for services obtained under this section. The right to order payment for all services provided under this chapter is solely with the board. All claims by a health care provider for payment for services are against the employer and the employer's insurance carrier, if any, and must be made with the board under this chapter.

SECTION 27. IC 22-3-7-19, AS AMENDED BY P.L.31-2000, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 19. ~~(a) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability under this law with respect to occupational diseases occurring:~~

~~(1) on and after July 1, 1974, and before July 1, 1976, the average weekly wages shall be considered to be:~~

~~(A) not more than one hundred thirty-five dollars (\$135); and~~

~~(B) not less than seventy-five dollars (\$75);~~

~~(2) on and after July 1, 1976, and before July 1, 1977, the average weekly wages shall be considered to be:~~

~~(A) not more than one hundred fifty-six dollars (\$156); and~~

C  
o  
p  
y



(B) not less than seventy-five dollars (\$75);  
 (3) on and after July 1, 1977; and before July 1, 1979; the average  
 weekly wages are considered to be:

(A) not more than one hundred eighty dollars (\$180); and  
 (B) not less than seventy-five dollars (\$75);  
 (4) on and after July 1, 1979; and before July 1, 1980; the average  
 weekly wages are considered to be:

(A) not more than one hundred ninety-five dollars (\$195); and  
 (B) not less than seventy-five dollars (\$75);  
 (5) on and after July 1, 1980; and before July 1, 1983; the average  
 weekly wages are considered to be:

(A) not more than two hundred ten dollars (\$210); and  
 (B) not less than seventy-five dollars (\$75);  
 (6) on and after July 1, 1983; and before July 1, 1984; the average  
 weekly wages are considered to be:

(A) not more than two hundred thirty-four dollars (\$234); and  
 (B) not less than seventy-five dollars (\$75); and  
 (7) on and after July 1, 1984; and before July 1, 1985; the average  
 weekly wages are considered to be:

(A) not more than two hundred forty-nine dollars (\$249); and  
 (B) not less than seventy-five dollars (\$75).

(b) (a) In computing compensation for temporary total disability,  
 temporary partial disability, and total permanent disability, with respect  
 to occupational diseases occurring on and after July 1, 1985, and before  
 July 1, 1986, the average weekly wages are considered to be:

(1) not more than two hundred sixty-seven dollars (\$267); and  
 (2) not less than seventy-five dollars (\$75).

(c) (b) In computing compensation for temporary total disability,  
 temporary partial disability, and total permanent disability, with respect  
 to occupational diseases occurring on and after July 1, 1986, and before  
 July 1, 1988, the average weekly wages are considered to be:

(1) not more than two hundred eighty-five dollars (\$285); and  
 (2) not less than seventy-five dollars (\$75).

(d) (c) In computing compensation for temporary total disability,  
 temporary partial disability, and total permanent disability, with respect  
 to occupational diseases occurring on and after July 1, 1988, and before  
 July 1, 1989, the average weekly wages are considered to be:

(1) not more than three hundred eighty-four dollars (\$384); and  
 (2) not less than seventy-five dollars (\$75).

(e) (d) In computing compensation for temporary total disability,  
 temporary partial disability, and total permanent disability, with respect  
 to occupational diseases occurring on and after July 1, 1989, and before

C  
O  
P  
Y



July 1, 1990, the average weekly wages are considered to be:

- (1) not more than four hundred eleven dollars (\$411); and
- (2) not less than seventy-five dollars (\$75).

~~(f)~~ (e) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1990, and before July 1, 1991, the average weekly wages are considered to be:

- (1) not more than four hundred forty-one dollars (\$441); and
- (2) not less than seventy-five dollars (\$75).

~~(g)~~ (f) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1991, and before July 1, 1992, the average weekly wages are considered to be:

- (1) not more than four hundred ninety-two dollars (\$492); and
- (2) not less than seventy-five dollars (\$75).

~~(h)~~ (g) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1992, and before July 1, 1993, the average weekly wages are considered to be:

- (1) not more than five hundred forty dollars (\$540); and
- (2) not less than seventy-five dollars (\$75).

~~(i)~~ (h) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1993, and before July 1, 1994, the average weekly wages are considered to be:

- (1) not more than five hundred ninety-one dollars (\$591); and
- (2) not less than seventy-five dollars (\$75).

~~(j)~~ (i) In computing compensation for temporary total disability, temporary partial disability and total permanent disability, with respect to occupational diseases occurring on and after July 1, 1994, and before July 1, 1997, the average weekly wages are considered to be:

- (1) not more than six hundred forty-two dollars (\$642); and
- (2) not less than seventy-five dollars (\$75).

~~(k)~~ (j) In computing compensation for temporary total disability, temporary partial disability, and total permanent disability, the average weekly wages are considered to be:

- (1) with respect to occupational diseases occurring on and after July 1, 1997, and before July 1, 1998:
  - (A) not more than six hundred seventy-two dollars (\$672); and
  - (B) not less than seventy-five dollars (\$75);
- (2) with respect to occupational diseases occurring on and after July 1, 1998, and before July 1, 1999:

C  
o  
p  
y



- (A) not more than seven hundred two dollars (\$702); and  
 (B) not less than seventy-five dollars (\$75);  
 (3) with respect to occupational diseases occurring on and after  
 July 1, 1999, and before July 1, 2000:  
 (A) not more than seven hundred thirty-two dollars (\$732);  
 and  
 (B) not less than seventy-five dollars (\$75);  
 (4) with respect to occupational diseases occurring on and after  
 July 1, 2000, and before July 1, 2001:  
 (A) not more than seven hundred sixty-two dollars (\$762); and  
 (B) not less than seventy-five dollars (\$75);  
 (5) with respect to disablements occurring on and after July 1,  
 2001, and before July 1, 2002:  
 (A) not more than eight hundred twenty-two dollars (\$822);  
 and  
 (B) not less than seventy-five dollars (\$75); and  
 (6) with respect to disablements occurring on and after July 1,  
 2002, **and before July 1, 2004:**  
 (A) not more than eight hundred eighty-two dollars (\$882);  
 and  
 (B) not less than seventy-five dollars (\$75).

**(k) In computing compensation for temporary total disability, temporary partial disability, permanent partial disability, and total permanent disability, for occupational diseases occurring after June 30, 2004, the average weekly wages are computed under this subsection, and the weekly compensation payable is determined under:**

- (1) section 16(f) of this chapter for temporary total disability and permanent total disability;  
 (2) section 16(k) of this chapter for temporary partial disability; or  
 (3) section 16.3 of this chapter for permanent partial disability.

~~(1) The maximum compensation that shall be paid for occupational disease and its results under any one (1) or more provisions of this chapter with respect to disability or death occurring:~~

- ~~(1) on and after July 1, 1974, and before July 1, 1976, shall not exceed forty-five thousand dollars (\$45,000) in any case;~~  
~~(2) on and after July 1, 1976, and before July 1, 1977, shall not exceed fifty-two thousand dollars (\$52,000) in any case;~~  
~~(3) on and after July 1, 1977, and before July 1, 1979, may not exceed sixty thousand dollars (\$60,000) in any case;~~

C  
o  
p  
y



(4) on and after July 1, 1979, and before July 1, 1980, may not exceed sixty-five thousand dollars (\$65,000) in any case;  
 (5) on and after July 1, 1980, and before July 1, 1983, may not exceed seventy thousand dollars (\$70,000) in any case;  
 (6) on and after July 1, 1983, and before July 1, 1984, may not exceed seventy-eight thousand dollars (\$78,000) in any case; and  
 (7) on and after July 1, 1984, and before July 1, 1985, may not exceed eighty-three thousand dollars (\$83,000) in any case.

(m) (l) The maximum compensation with respect to disability or death occurring on and after July 1, 1985, and before July 1, 1986, which shall be paid for occupational disease and the results thereof under the provisions of this chapter or under any combination of its provisions may not exceed eighty-nine thousand dollars (\$89,000) in any case. The maximum compensation with respect to disability or death occurring on and after July 1, 1986, and before July 1, 1988, which shall be paid for occupational disease and the results thereof under the provisions of this chapter or under any combination of its provisions may not exceed ninety-five thousand dollars (\$95,000) in any case. The maximum compensation with respect to disability or death occurring on and after July 1, 1988, and before July 1, 1989, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred twenty-eight thousand dollars (\$128,000) in any case.

(n) (m) The maximum compensation with respect to disability or death occurring on and after July 1, 1989, and before July 1, 1990, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred thirty-seven thousand dollars (\$137,000) in any case.

(o) (n) The maximum compensation with respect to disability or death occurring on and after July 1, 1990, and before July 1, 1991, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of its provisions may not exceed one hundred forty-seven thousand dollars (\$147,000) in any case.

(p) (o) The maximum compensation with respect to disability or death occurring on and after July 1, 1991, and before July 1, 1992, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred sixty-four thousand dollars (\$164,000) in any case.

(q) (p) The maximum compensation with respect to disability or death occurring on and after July 1, 1992, and before July 1, 1993, that shall be paid for occupational disease and the results thereof under this

C  
o  
p  
y



chapter or under any combination of the provisions of this chapter may not exceed one hundred eighty thousand dollars (\$180,000) in any case.

(~~tr~~) (q) The maximum compensation with respect to disability or death occurring on and after July 1, 1993, and before July 1, 1994, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed one hundred ninety-seven thousand dollars (\$197,000) in any case.

(~~st~~) (r) The maximum compensation with respect to disability or death occurring on and after July 1, 1994, and before July 1, 1997, that shall be paid for occupational disease and the results thereof under this chapter or under any combination of the provisions of this chapter may not exceed two hundred fourteen thousand dollars (\$214,000) in any case.

(~~t~~) (s) The maximum compensation that shall be paid for occupational disease and the results of an occupational disease under this chapter or under any combination of the provisions of this chapter may not exceed the following amounts in any case:

(1) With respect to disability or death occurring on and after July 1, 1997, and before July 1, 1998, two hundred twenty-four thousand dollars (\$224,000).

(2) With respect to disability or death occurring on and after July 1, 1998, and before July 1, 1999, two hundred thirty-four thousand dollars (\$234,000).

(3) With respect to disability or death occurring on and after July 1, 1999, and before July 1, 2000, two hundred forty-four thousand dollars (\$244,000).

(4) With respect to disability or death occurring on and after July 1, 2000, and before July 1, 2001, two hundred fifty-four thousand dollars (\$254,000).

(5) With respect to disability or death occurring on and after July 1, 2001, and before July 1, 2002, two hundred seventy-four thousand dollars (\$274,000).

(6) With respect to disability or death occurring on and after July 1, 2002, **and before July 1, 2004**, two hundred ninety-four thousand dollars (\$294,000).

**(t) For disability or death occurring after June 30, 2004, the maximum compensation for occupational disease and the results of an occupational disease under this chapter is the following:**

**(1) For temporary total disability and temporary partial disability, the weekly compensation continues as long as the disability lasts.**

C  
o  
p  
y



(2) For permanent partial disability, the weekly compensation payable is determined under section 16.3 of this chapter.

(3) For permanent total disability, the weekly compensation is payable for life.

(u) For all disabilities occurring before July 1, 1985, "average weekly wages" shall mean the earnings of the injured employee in the employment in which the employee was working at the time of the last exposure during the period of fifty-two (52) weeks immediately preceding the last day of the last exposure divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts thereof remaining after the time lost has been deducted. Where the employment prior to the last day of the last exposure extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed if results just and fair to both parties will be obtained. Where by reason of the shortness of the time during which the employee has been in the employment of the employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which, during the fifty-two (52) weeks previous to the last day of the last exposure, was being earned by a person in the same grade employed at the same work by the same employer, or if there is no person so employed, by a person in the same grade employed in that same class of employment in the same district. Whenever allowances of any character are made to an employee in lieu of wages or a specified part of the wage contract, they shall be deemed a part of the employee's earnings.

(v) (u) For all disabilities occurring on and after July 1, 1985, "average weekly wages" means the earnings of the injured employee during the period of fifty-two (52) weeks immediately preceding the disability divided by fifty-two (52). If the employee lost seven (7) or more calendar days during the period, although not in the same week, then the earnings for the remainder of the fifty-two (52) weeks shall be divided by the number of weeks and parts of weeks remaining after the time lost has been deducted. If employment before the date of disability extended over a period of less than fifty-two (52) weeks, the method of dividing the earnings during that period by the number of weeks and parts of weeks during which the employee earned wages shall be followed if results just and fair to both parties will be obtained. If by

C  
o  
p  
y





reason of the shortness of the time during which the employee has been in the employment of the employer or of the casual nature or terms of the employment it is impracticable to compute the average weekly wages for the employee, the employee's average weekly wages shall be considered to be the average weekly amount that, during the fifty-two (52) weeks before the date of disability, was being earned by a person in the same grade employed at the same work by the same employer or, if there is no person so employed, by a person in the same grade employed in that same class of employment in the same district. Whenever allowances of any character are made to an employee instead of wages or a specified part of the wage contract, they shall be considered a part of the employee's earnings.

(v) **"State average weekly wage" means the average of the earnings of the employees in all occupations subject to this chapter of all employers subject to this chapter as determined and published by the worker's compensation board on January 1 and July 1, each year, beginning July 1, 2004. The amount published is conclusive and applicable as the basis for computing compensation rates until the worker's compensation board's next determination and publication.**

(w) **This subsection applies to disablements occurring before July 1, 2004.** The provisions of this article may not be construed to result in an award of benefits in which the number of weeks paid or to be paid for temporary total disability, temporary partial disability, or permanent total disability benefits combined exceeds five hundred (500) weeks. This section shall not be construed to prevent a person from applying for an award under IC 22-3-3-13. However, in case of permanent total disability resulting from a disablement occurring on or after January 1, 1998, **and before July 1, 2004**, the minimum total benefit shall not be less than seventy-five thousand dollars (\$75,000).

C  
o  
p  
y

